

Deutsche Bank Trust Co. Ams. v Deutsch

Supreme Court of New York, Appellate Division, Second Department

January 17, 2018, Decided

2015-11188, 2015-11189

Reporter

157 A.D.3d 767 *; 69 N.Y.S.3d 354 **; 2018 N.Y. App. Div. LEXIS 295 ***; 2018 NY Slip Op 00275 ****; 2018 WL 444206

[****1] Deutsche Bank Trust Company Americas, as Trustee, Respondent, v Aron Deutsch, Appellant, et al., Defendants. (Index No. 28582/09)

Counsel: [***1] Berg & David, PLLC, Brooklyn, NY (Abraham David, Madeline Greenblatt, and Robert Spolzino of counsel), for appellant.

Zeichner Ellman & Krause LLP, New York, NY (Steven S. Rand and J. David Morrissy of counsel), for respondent.

Judges: CHERYL E. CHAMBERS, J.P., JEFFREY A. COHEN, BETSY BARROS, LINDA CHRISTOPHER, JJ. CHAMBERS, J.P., COHEN, BARROS and CHRISTOPHER, JJ., concur.

Opinion

[**355] [*767] Appeals from two orders of the Supreme Court, Kings County (Martin M. Solomon, J.), both dated August 18, 2015. The first order, insofar as appealed from, granted the plaintiff's motion for an order of reference, and denied the cross motion of [*768] the defendant Aron Deutsch pursuant to CPLR 3215 (c), in effect, to dismiss the complaint insofar as asserted against him as abandoned. The second order, insofar as appealed from, granted the plaintiff's motion for an order of reference.

Ordered that the first order dated August 18, 2015, is reversed insofar as appealed from, on the law, the cross motion of the defendant Aron Deutsch pursuant to CPLR 3215 (c), in effect, to dismiss the complaint insofar as asserted against him as abandoned is granted, the plaintiff's

motion for an order of reference is denied, and the second order dated August 18, [***2] 2015, is vacated; and it is further,

Ordered that the appeal from the second order dated August 18, 2015, is dismissed as academic in light of our determination on the appeal from the first order dated August 18, 2015; and it is further,

Ordered that one bill of costs is awarded to the defendant Aron Deutsch.

In June 2006, Aron Deutsch (hereinafter the defendant) executed a note in the sum of \$1,000,000, which was secured by a mortgage on residential property located in Brooklyn. Subsequently, the mortgage was assigned to the plaintiff. In November 2009, the plaintiff commenced this action against the defendant, among others, to foreclose the mortgage. The defendant was served with process pursuant to CPLR 308 (2) on November 11, 2009, but did not answer the complaint. Mandatory foreclosure settlement conferences were held from May 18, 2010, until October 4, 2011, at which time the Supreme Court advised the plaintiff that it could proceed with the action.

In February of 2014, more than two years later, the plaintiff moved, inter alia, for an order of reference. The defendant cross-moved pursuant to CPLR 3215 (c), in effect, to dismiss the complaint insofar as asserted against him as abandoned. The Supreme Court [***3] granted the plaintiff's motion [**356] and denied the defendant's cross motion.

CPLR 3215 (c) provides that "[i]f the plaintiff fails to take proceedings for the entry of a [default] judgment within one year after [a] default, the court shall not enter judgment but shall dismiss the complaint as abandoned . . . unless sufficient cause is shown why the complaint should not be dismissed." Here, the defendant defaulted in December 2009, but the plaintiff did not initiate proceedings for the entry of a default judgment until February 2014. Although any motions in the action were held in abeyance while settlement conferences were pending (*see* 22 NYCRR 202.12a [c] [7]), the plaintiff was authorized to proceed with the action at the conclusion of mandatory settlement conferences on October 4, 2011. However, the plaintiff took no steps to initiate proceedings for entry of a default judgment until more than two years later, and it failed to demonstrate a reasonable excuse for its delay (*see Wells Fargo Bank, N.A. v Bonanno*, 146 AD3d 844, 846, 45 NYS3d 173 [2017]; [*769] *HSBC Bank USA, N.A. v Grella*, 145 AD3d 669, 671, 44 NYS3d 56 [2016]; *U.S. Bank, N.A. v Dorvelus*, 140 AD3d 850, 852, 32 NYS3d 631

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[2016]). Accordingly, the Supreme Court should have denied the plaintiff's motion for an order of reference and granted the defendant's cross motion pursuant to CPLR 3215 (c), in effect, to dismiss the complaint insofar as asserted against him as abandoned. [***4] Chambers, J.P., Cohen, Barros and Christopher, JJ., concur.

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