

SEQUENCE NO. 8

APPLICANT: HON. DAVID ELLIOT

present HON. KEVIN J. KERRIGAN

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF QUEENS

U.S. BANK NATIONAL ASSOCIATION

Plaintiff

-Against-

Pauline Morgan, Et al

Defendant(s)

LO for RPS PRO NY
At An IAS Part of the Supreme Court of the State of New York, held in and for the County of Queens, at 88-11 Sutphin Blvd Jamaica NY 11435 the courthouse thereof on 10th day of OCT 2019

Emergency Order to Show Cause

INDEX # Qn 2011 / 18002

Upon the Affidavit of Pauline Morgaan dated October 18, 2019, the annexed documents, and all prior proceedings had, it is hereby ORDERED that Plaintiff SHOW CAUSE before this Court, the Supreme

Court of the County of ~~Queens~~ ^{Queens 88-11 Sutphin Blvd Jamaica NY 11435} at ~~100 Supreme Ct Drive Mineola NY 11501~~ Part 14 Room 500 on ^{Nov 26} 2019

at 10 Am ^{12th} on the forenoon, or as soon thereafter as counsel can be heard, why an Order ^{20K} should not be entered (1) Staying the foreclosure matter of 187-20 Dunkirk Drive, Saint Albans, NY 11412.

(2) Pursuant to (2) Lack of service CPLR 5015 (A) (4). ^{Staying the foreclosure Auction} on November 8th 2019

And it is further **ORDERED** that pending a hearing and determination of this matter, Creditors, Plaintiff, ~~its~~ ^{selling the premises on or from} agents, attorneys, and assigns are stayed from enforcing any judgment issued against Defendant in the above-entitled matter or taking any other steps to enforce such judgment.

And it is further **ORDERED** that ^{personal} service of a copy of this Order to Show Cause made upon attorney-of-record by depositing a true and accurate copy of the same in the care and custody of the United States Post Office by first class mail, on or before October 22, shall be deemed good and sufficient service.

Raf

APPENDING

cc-PPP!

ENTER



JSC

✓

SUPREME COURT OF THE STATE OF
NEW YORK COUNTY OF QUEENS

U.S. BANK NATIONAL ASSOCIATION

Plaintiff

EMERGENCY AFFIDAVIT IN
SUPPORT OF
APPLICATION FOR
TEMPORARY INJUNCTIVE
RELIEF

-Against -

INDEX # Qn 2011 / 18002

PAULINE MORGAN, ET.AL

Defendant(s)

I, Pauline Morgan, swear under penalty of perjury to the following:

- 1 I am the Defendant, and as such, am fully familiar with the following facts and circumstances.
- 2 I respectfully submit this Affidavit in support of my motion, seeking an Order to:
- 3 Vacating and setting aside the foreclosure auction on October 14, 2019.
- 4 The Plaintiff never served me the summons and complaint; the description of the person that was served on the affidavit of service was not me, the height and weight are totally different from me. Furthermore, at the time of the service, the day of supposed service was at work; I work from 12 Am. to 9 Am, .six days a week.
- 5 This application must be entertained forthwith because, without a stay, my life may be disrupted by the Plaintiff's enforcement of the Order.
- 6 If the temporary injunctive relief requested is not granted, irreparable harm may be caused to me that severely outweighs any prejudice to the Plaintiff.

- 7 The Plaintiff would be free to do whatever it can to take the house from me before the underlying application is decided.
- 8 Granting such further relief or additional conditions this Court may deem just and proper.
- 9 I am requesting from the court, stay the auction and vacate the Foreclosure auction on my property.

WHEREFORE it is respectfully requested that the Court grant my motion by staying the foreclosure auction on my property located at 187-20 Dunkirk Drive, Saint Albans, NY 11412 together with such other and further relief that this Court deems just and proper

_____/S/_____
Pauline Morgan

Sworn to before me on this _____ day of _____ 2019

Notary

SUPREME COURT OF THE STATE OF
NEW YORK COUNTY OF QUEENS

U.S. BANK NATIONAL ASSOCIATION

Plaintiff

Affidavit in Support

INDEX # Qn 2011 / 18002

-Against -

PAULINE MORGAN, ET.AL

Defendant(s)

Pauline Morgan swears under penalty of perjury and states as follows:

1. I am the Defendant Pauline Morgan, and as such, am fully familiar with the following facts and circumstances.
2. I respectfully submit this Affidavit in support of my motion, seeking an Order to:
3. Vacating and setting aside the judgment entered on default in the above-entitled matter due to failure to serve the Defendant in this action;
4. Setting a date for a traverse hearing.
5. To extend the time to file an answer the Summons and Complaint.
6. Staying all judgments, actions, and/or executions arising out of the decision granted on default in the above-entitled matter pending the resolution of the instant motion;
7. Granting such further relief or additional conditions this Court may deem just and proper.
8. My name is Pauline Morgan and I live at 187-23 Sullivan Road St. Albans NY 11412 and I was never served in this action.

9. The affidavit of service was tilled with numerous inaccuracies and misrepresentations. The process server Anthony Mazzella claimed he served a 5'10 female, 200 lb. 30-year-old female on August 15, 2011, at 187-23 Sullivan Road St. Albans NY 11412.
10. First of all, I am not 5'10 nor did I weight 200lbs in 2011, I weighed 175lbs and I was 51 years old not 30.
11. More importantly at the time of the alleged service; I was at work that day August 15, 2019, It was a Monday and I work Mondays from 9 pm to 9 am.
12. Furthermore, no one who lived at my property that fits the description of the person that was served. I truly believe the service never happened; because everything in the affidavit of service is false,
13. I would like to review Anthony Mazzella's log from August 15, 2011, to see what he has in his logbook and the GPS of his location concerning his supposed service.
14. The duty of licensed process serving agencies to keep records. Every process serving agency shall keep complete and accurate records with respect to each individual licensee to whom it distributes, assigns or delivers process to be served.
15. Such records shall be kept in a searchable manner that permits ready identification of (i) the daily activity of each such individual licensee and (ii) any or all process assigned or distributed for service by the name of the person or entity from whom the process serving agency received such papers for service.
16. A process server's affidavit of service constitutes prima facie evidence that the defendant was validly served (*see Wells Fargo Bank, N.A. v Christie*, 83 AD3d 824, 825 [2011]; *Verille v Kopic*, 304 AD2d 823 [2003]; *Frankel v Schilling*, 149 AD2d at 659; *Skyline Agency v Coppotelli, Inc.*, 117 AD2d 135, 139 [1986]). However, when a defendant submits a sworn denial of receipt of service containing specific facts to refute the statements in the affidavit of the process server, the prima facie showing is rebutted and the plaintiff must establish personal jurisdiction by a 989*989 preponderance of the evidence at a hearing (*see Velez v Forcelli*, 125 AD3d 643, 644 [2015]; *Sileo v Victor*, 104 AD3d 669, 670 [2013]; *Dime Sav. Bank of N.Y. v Steinman*, 206 AD2d 404, 405 [1994]; *Frankel v Schilling*, 149 AD2d at 659; *Skyline Agency v Coppotelli, Inc.*, 117 AD2d at 139).

17. Pursuant to CPLR §317, a party served with the summons and complaint in a manner other than personal delivery or an agent designated for service, may vacate the default within one year of learning of the judgment, upon demonstrating that they lack notice and have a meritorious defense ([Eugene Di Lorenzo, Inc. v. A.C. Dutton Lumber Co., Inc.](#), 67 N.Y. 2d 138, 492 N.E.2d 116, 501 N.Y.S 2d 8 [1986] and [PHH Mortg. Corp. v. Muricy](#), 135 A.D. 3d 725, 24 N.Y.S.3d 137 [2nd Dept., 2016]).

18. A defendant is not entitled to CPLR §317 relief where the failure to obtain service or notice of the action was deliberate. A conclusory denial of receipt is insufficient to raise an issue of fact for purposes of vacating a judgment ([HSBC Bank USA v. Pursuant to CPLR §317, a party served with the summons and complaint in a manner other than personal delivery or an agent designated for service, may vacate the default within one year of learning of the judgment, upon demonstrating that they lack notice and have a meritorious defense \(Eugene Di Lorenzo, Inc. v. A.C. Dutton Lumber Co., Inc.](#), 67 N.Y. 2d 138, 492 N.E.2d 116, 501 N.Y.S 2d 8 [1986] and [PHH Mortg. Corp. v. Muricy](#), 135 A.D. 3d 725, 24 N.Y.S.3d 137 [2nd Dept., 2016]). A defendant is not entitled to CPLR §317 relief where the failure to obtain service or notice of the action was deliberate.

19. Furthermore all parties who may be affected by the determination are indispensable (see [Crouse-Hinds Co. v InterNorth, Inc.](#), 634 F2d 690, 701 [2d Cir 1980], citing [Lomayaktewa v Hathaway](#), 520 F2d 1324, 1325 [9th Cir 1975], cert denied sub nom. [Susenkewa v Kleppe](#), 425 US 903 [1976]).

20. If complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action" (CPLR 1001 [a]; see [Censi v Cove Landings, Inc.](#), 65 AD3d 1066, 1067-1068 [2009]; cf. [Matter of Hutton Devs. v 346-364 Washington Ave. Corp.](#), 17 AD3d 977, 978 [2005]; [Salvatore R. Beltrone Marital Trust II v Lavelle & Finn, LLP](#), 13 AD3d 869, 871 [2004]).

21. A failure to be properly served with the process is a reasonable excuse, justifying the vacatur of a default.

22. Due to the lack of service; I was not afforded the opportunity to submit an answer. or attend a settlement conference so that I could receive a loan modification.

CPLR 2004, 3012 [d]; Chase Home Fin., LLC v Minott, 115 AD3d 634, 634 [2014]; Community Preserv. Corp. v Bridgewater Condominiums, LLC, 89 d 784, 785 [2011]; Taddeo-Amendola v 970 Assets, LLC, 72 AD3d 677 [2010]).

23. The plaintiff never served me the summons and complaint; for the last five years. I have been in and out of the hospital due to my battle with cancer. If I lose my property my credit will be ruined and due to medical issues, I will never recover financially. So I ask to court to review my order and vacate

WHEREFORE it is respectfully requested that the Court grant my order by staying this action as well as vacating the Judgment of Foreclosure, together with such other and further relief that this Court deems just and proper

_____/S/_____
Pauline Morgan

Sworn to before me on this _____ day of _____ 2019

Notary

SUPREME COURT OF THE STATE OF
NEW YORK COUNTY OF QUEENS

U.S. BANK NATIONAL ASSOCIATION

Plaintiff

Emergency Order to Show Cause

INDEX # Qn 2011 / 18002

-Against -

Pauline Morgan, Et, al

Defendant(s)

I, Pauline Morgan, swear under penalty of perjury to the following:

I notified the Plaintiff's Attorney of record Woods Oviatt Gilman LLP at **(855) 227-5072**, that I will be filing an Order to Show Cause on Friday, October 17, 2019, requesting a stay of the foreclosure auction on November 8, 2019 at Queens Supreme Court 88-11 Sutphin Blvd Jamaica NY 11435 at 1:30 PM. I was told by Naomi to fax the request to 585-454-3968.

_____/S/_____
Pauline Morgan

Sworn to before me on this _____ day of _____ 2019

Notary

SUPREME COURT OF THE STATE OF
NEW YORK COUNTY OF QUEENS

U.S. BANK NATIONAL ASSOCIATION

Plaintiff

INDEX # Qn 2011 / 18002

-Against -

PAULINE MORGAN, ET.AL

Defendant(s)

Emergency Order to Show Cause

PAULINE MORGAN
187-20 Dunkirk Drive,
Saint Albans, NY 11412
Office 718-323-4600
Fax 718-785-9759

Signature

Print Name Beneath

The service of a copy of the within is hereby admitted.

Dated: _____

Date:

Signature.....

Print Signer's Name.....