

Ohio Sav. Bank v Decaudin
2015 NY Slip Op 05165
Decided on June 17, 2015
Appellate Division, Second Department
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Decided on June 17, 2015 SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Second Judicial Department
WILLIAM F. MASTRO, J.P.
RUTH C. BALKIN
SANDRA L. SGROI
COLLEEN D. DUFFY, JJ.

2013-08708
(Index No. 8353/06)

[*1]Ohio Savings Bank, appellant,

v

Bruno Decaudin, et al., defendants, David Brown, respondent.

Hinshaw & Culbertson, LLP, New York, N.Y. (Schuyler Kraus and Annmarie D'Amour of counsel), for appellant.

McCullough, Goldberger & Staudt, LLP, White Plains, N.Y. (Ruth F-L. Post of counsel), for respondent.

DECISION & ORDER

In an action to foreclose a mortgage, the plaintiff appeals from an order of the Supreme Court, Westchester County (Scheinkman, J.), entered July 11, 2013, which granted the motion of the defendant David Brown pursuant to CPLR 3215(c) to dismiss the complaint insofar as asserted against him.

ORDERED that the order is affirmed, with costs.

To avoid dismissal of the action as abandoned pursuant to CPLR 3215(c), the plaintiff was required to demonstrate a reasonable excuse for its delay in seeking a default judgment and a potentially meritorious cause of action (*see Pipinias v J. Sackaris & Sons, Inc.*, 116 AD3d 749, 751; *Giglio v NTIMP, Inc.*, 86 AD3d 301, 307-308). The plaintiff failed to offer a reasonable excuse for its delay of seven years in seeking a default judgment after the defendant David Brown failed to serve a responsive pleading. Accordingly, the Supreme Court properly granted Brown's motion pursuant to CPLR 3215(c) to dismiss the complaint insofar as asserted against him as abandoned (*see 115-41 St. Albans Holding Corp. v Estate of Harrison*, 71 AD3d 653, 653-654; *Staples v Jeff Hunt Devs., Inc.*, 56 AD3d 459; *Counsel Abstract, Inc. Defined Benefit Pension Plan v Jerome Auto Ctr., Inc.*, 23 AD3d 274; *State St. Bank & Trust Co. v Francis*, 284 AD2d 324, 324-325).

MASTRO, J.P., BALKIN, SGROI and DUFFY, JJ., concur.

ENTER:

Aprilanne Agostino

Clerk of the Court

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