

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE KEVIN J. KERRIGAN Part 10
Justice

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Deutsche Bank National Trust Company,
as Indenture Trustee for New Century Home
Equity Loan Trust 2004-3,

Index
Number: 27411/09

Plaintiff,

- against -

Motion
Date: 7/5/11

Clement Mbah, Emelis, Inc., City of New
York Environmental Control Board, City of
New York Parking Violations Board, Brittany
Robinson, Artis Williams, Priscilla Heath,
Jerrod Winler, Andre Coel, Alexis McCoy,
Shanta Seaborn,

Motion
Cal. Number: 4

Defendant.

Motion Seq. No.: 4

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The following papers numbered 1 to 10 read on this application to vacate the default judgment, stay the foreclosure sale and dismiss the action.

| | <u>Papers Numbered</u> |
|--|----------------------------|
| Order to Show Cause-Affidavits-Exhibits..... | 1-4 |
| Affirmation in Opposition-Exhibits..... | 5-7 |
| Reply-Exhibit..... | 8-10 |

Upon the foregoing papers it is ordered that the motion is decided as follows:

As a preliminary matter, the Court notes that counsel for movant does not identify in his moving papers which defendant he is representing or which defendant is moving for the instant relief. He affirms that he has been retained by "Defendant" without specifying which defendant and seeks vacatur of the default judgment of foreclosure and sale and dismissal of the action without specifying as to whom such relief is requested. However, since the only supporting affidavit annexed to the moving papers was from Mbah who avers that he was not served with the summons and complaint and thus was unable to attend a mandatory settlement

conference or interpose an answer, and since a prior order to show cause was brought by counsel for the same relief on behalf of defendant Emelis, Inc., which motion was denied pursuant to the order of this Court issued on September 9, 2010, the Court deems the instant motion as being brought only by Mbah.

Motion by Mbah to vacate the default judgment of foreclosure and sale, issued by this Court on June 15, 2010, as against him is denied. Movant has failed to set forth an excuse for his default or a meritorious defense to foreclosure (see CPLR 5015 [a][1]; Bank of New York v. Segui, 42 AD 3d 555 [2nd Dept 2007]).

Mbah purchased the subject premises and took out the underlying mortgage on July 29, 2004. Thereafter, Mbah conveyed his ownership of the premises by deed to Emelis, Inc. on February 5, 2005, which deed was recorded on February 18, 2005.

Mbah's bare denial of service of the summons and complaint is insufficient to rebut the presumption of proper service created by the process server's affidavit of service and, thus, does not raise a traversable issue (see Beneficial Homeowner Service Corporation v Girault, 60 AD 3d 984 [2nd Dept 2009]).

In addition, Mbah has failed to articulate a meritorious defense to the foreclosure action (id.).

Accordingly, the motion is denied. All stays are vacated.

Dated: July 11, 2011

KEVIN J. KERRIGAN, J.S.C.