

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

P R E S E N T : HON. JEFFREY S. BROWN  
JUSTICE

-----X TRIAL/IAS PART 16

PLYMOUTH PARK TAX SERVICES, LLC,  
Plaintiff(s),

INDEX # 10913/12

-against-

Mot. Seq. 1, 2  
Mot. Date 6.13.13  
Submit Date 1.31.14

HERTHA HANDLER and WALTER L. HANDLER, if they be living, if they be dead, their respective heirs-at law, next of kin, distributees, executors, administrators, trustees, devisees, legatees, assignees, lienors, creditors, and successors in interest, and generally all persons having or claiming under, by, or through HERTHA HANDLER and WALTER L. HANDLER, if they be dead, whether by purchase, inheritance, lien or otherwise, including any right, title or interest in and to the real property described in the complaint herein, all of who and whose names and places of residence are unknown to the plaintiff;

UNITED STATES OF AMERICA, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, OYSTER BAY ESTATES HOMEOWNER'S ASSOCIATION, INC.,

"JOHN DOE #1" through "JOHN DOE #12," the last twelve names being fictitious and unknown to the plaintiff, the person or parties intended being the tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises, described in the complaint,

Defendant(s).

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The following papers were read on this motion:	Papers Numbered
	MS 1 MS2
Notice of Motion, Affidavits (Affirmations), Exhibits Annexed.....	1 4
Answering Affidavit .....	2 3
Reply Affidavit.....	3 5

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Defendants Hertha Handler and Walter Handler move for an order compelling the plaintiffs to accept their answer. Plaintiff Plymouth Park Tax Services LLC cross-moves for an order appointing a referee to compute the amount due, to determine whether the subject premises shall be sold as one parcel and to amend the caption of the action.

This action to foreclose a tax lien was commenced by the filing of the summons and complaint on or about August 27, 2012. According to the affidavits of service attached to the moving papers, defendant Hertha Handler was served personally on September 6, 2012. The Oyster Bay Estates Homeowner's Association was served by service on an authorized agent on September 4, 2012. Defendant Walter Handler has not been served with the summons and complaint. Plaintiff states that this defendant is deceased and title passed to Hertha Handler.

Counsel for defendants states that due to law office error, the result of a personnel change and an isolated incident of mis communication, a responsive pleading was "untimely served." The answer was served on or about May 13, 2013. A notice of rejection of the answer was served on or about May 15, 2013.

Upon learning of the error, counsel immediately called counsel for plaintiff. Counsel states that plaintiff has not been prejudiced by this delay, and the attached verified answer sets forth a meritorious defense.

In support of the cross-motion is an affidavit from Hillary Leonard, a vice president of plaintiff corporation. He has access to and maintains the records for plaintiff including this tax lien. This is an action to foreclose a tax lien on real property known as Section 25, Block C01, Lot 1009 also known as 140 Foxhunt Crescent East, Oyster Bay, New York. Plaintiff is currently the owner and holder of the tax lien sold by the Treasurer of the County of Nassau (Certificate 000414 for tax year 2008 dated February 17, 2009 in the original sum of \$15,179.23) The tax lien has not been paid as required and is currently due and owing with interest thereon.

Counsel for plaintiff further states that this is an action to foreclose a tax lien which does not fit the criteria for inclusion in the Residential Foreclosure Program pursuant to RPAPL 1304. Pursuant to RPAPL 1303, a notice was filed and delivered with the summons and complaint.

On August 27, 2012 a notice of pendency was filed in the Office of the County Clerk, Nassau County. No individual defendant is an infant, incompetent or an absentee. As per the attached affidavits, all defendants have been served. No defendant has answered or appeared, except that defendant Handler has made a motion to compel plaintiff to accept their answer. The time for defendants to answer has expired.

In opposition to the motion, plaintiff argues that defendants' motion is only supported by counsel's affirmation. The proposed answer contains ten "boilerplate" affirmative defenses that do not go to the issue of foreclosure, outstanding taxes or failure to pay taxes. There is no evidence as to a meritorious defense.

In reply and in support of the motion, defendants' counsel argues that since defendant moved to compel before the cross-motion to appoint a referee was sought, there is no basis to deny the instant motion. Further, defendant argues that there is no indication that plaintiff served a Notice of Redemption as required by Section 5-51.0 of the Nassau County Administrative Code.

In reply, plaintiff attaches a Notice to Redeem that was served on or about October 24, 2011. In any event, the service of a Notice to Redeem is not a condition precedent to the prosecution of a foreclosure action.

"To compel the plaintiff to accept an untimely answer as timely, a defendant must provide a reasonable excuse for the delay and demonstrate a potentially meritorious defense to the action' (Ryan v. Breezy Point Coop., Inc., 76 AD3d 523, 524; see *Community Preserv. Corp. v. Bridgewater Condominiums, LLC*, 89 AD3d 784, 785). 'The determination of what constitutes a reasonable excuse lies within the sound discretion of the Supreme Court' (*Maspeth Fed. Sav. & Loan Assn. v. McGown*, 77 AD3d 889, 890; see *Star Indus., Inc. v. Innovative Beverages, Inc.*, 55 AD3d 903, 904; *Antoine v. Bee*, 26 AD3d 306, 306)." (*JP Morgan Chase Bank v Palma*, 114 AD3d 645 [2d Dept. 2014]).

In essence, defendant contends that the basis for the failure to serve a timely answer was law office failure. "Although the Supreme Court has the discretion to accept law office failure as a reasonable excuse (see CPLR 2005; *Swensen v. MV Transp., Inc.*, 89 AD3d 924, 925 [2011]), the excuse must be supported by detailed allegations of fact explaining the law office failure (see *Matter of Esposito*, 57 AD3d 894, 895 [2008]) [other citation omitted]" *CEO Business Brokers, Inc. v. Alqabili*, 105 AD3d 989 [2d Dept 2013]). Here the facts proffered by defense counsel were vague, conclusory, undetailed and unsubstantiated and do not amount to a reasonable excuse for this more than seven month delay in answering. (*id.*)

"In view of the absence of a reasonable excuse, it is unnecessary to consider whether the defendants sufficiently demonstrated the existence of a potentially meritorious defense to the action (see *Trepel v. Greenman-Pedersen, Inc.*, 99 AD3d 789, 792; *Tribeca Lending Corp. v. Correa*, 92 AD3d 770, 771; *Alterbaum v. Shubert Org., Inc.*, 80 AD3d 635, 636)" (*CEO Business Brokers*, 105 AD3d 989).

The motion to compel plaintiff to accept defendant's answer is, therefore, **denied**.

With respect to the cross-motion, the requested relief is appropriate.

Accordingly, it is

ORDERED, that the branch of the plaintiff's motion seeking to amend the caption to delete therefrom reference to Walter L. Handler, "JOHN DOE #1" through "JOHN DOE #12," the United States of America and the New York State Department of Taxation and Finance is **GRANTED**; and it is further

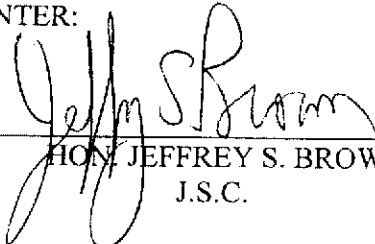
ORDERED, that the clerk of the court is directed to amend the caption consistent with this decision.

This constitutes the decision and order of this Court. All applications not specifically addressed herein are denied.

Submit order for the appointment of a referee to compute the amount that is due to the plaintiff and to determine whether the subject premises should be sold in one parcel.

Dated: Mineola, New York  
March 24, 2014

ENTER:

  
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HON. JEFFREY S. BROWN  
J.S.C.

Attorneys for Plaintiff  
Levy & Levy, Esqs.  
12 Tulip Drive  
Great Neck, NY 11021

Attorneys for Defendants Handler  
Ezratty Ezratty & Levine, LLP  
80 East Old Country Road  
Mineola, NY 11501

**ENTERED**

**MAR 26 2014**

NASSAU COUNTY  
COUNTY CLERK'S OFFICE