

DOCKET NO: BPH-CV20-6008488-S
 SACHEM CAPITAL CORP.
 V.
 GERALD J. YONEY, ET AL

HOUSING SESSION
 AT BRIDGEPORT
 STATE OF CT

2024 MAY -3 A 9:47

SUPERIOR COURT
 HOUSING SESSION
 J.D. OF BRIDGEPORT
 MAY 3, 2024

MOTION TO OPEN 161.00
OBJECTION TO MOTION TO OPEN 162.00
MOTION TO OPEN 192.00

On April 29, 2024, the court heard argument on the motions to open 161.00, 192.00. Defendants' argument is that Sarah Yoney (f/k/a John Doe) and Theresa Yoney (f/k/a Jane Doe) filed appearances prior to the entry of a default for failure to appear and as such, as a matter of right, the court should not have entered judgment for failure to appear.

After reviewing the oral and written arguments of the parties, the relevant law, the court file and the equitable positions of the parties, the court disagrees with Defendants and denies the motions to open.

DISCUSSION

A brief description of the procedural history, court file and underlying facts are necessary to understand the court's reasoning. This is a post foreclosure eviction. The plaintiff filed this eviction action on January 6, 2020. After prolonged pleading practice, the case was set down for trial on March 3, 2023. At the time the trial was scheduled, Defendants, Sarah Yoney and Theresa Yoney had not appeared and were still named John and Jane Doe in the case.

The court held a summary process trial on March 3, 2023. None of the Defendants appeared. Defendant, Gerald J. Yoney, who was appropriately noticed and was represented by counsel was defaulted for failure to appear a trial at 11:34 am. Plaintiff's counsel asked that the

Doe's be reinstated, based upon information and belief, that the Does were still in possession. There was a lengthy discussion regarding preserving the Doe's due process rights and deferred a final judgment until the plaintiff moved to have the Does defaulted for failure to appear. On Thursday, March 9, 2023, the plaintiff filed a motion for default for failure to appear against the Does.

The court waited the three business days in accordance with the practice book before acting on the motion. Defendants, Sarah and Theresa Yoney, claim that they fax filed their appearance on March 14, 2023, at 8:45 am from The UPS Store. Attached to their motion to open at entry no.: 161.00, Defendants attached Transmission Verification Reports showing that two documents were sent at 8:45 on March 14, 2023, to fax number: 203-382-8406. The fax number for fax filing for the Bridgeport Superior Court – Housing Session is 203-579-7291 which is not the number on the fax receipt presented. In other words, Defendants, Sarah and Theresa Yoney faxed their appearance somewhere else.

The court entered judgment on the motion for default for failure to appear and judgment of possession against Defendants, Sarah and Theresa Yoney at 8:57:51 a.m. on March 15, 2024. The appearances for Sarah and Theresa Yoney were filed with the housing clerk after the default entered.

Defendant, Theresa Yoney, filed a motion to open on March 20, 2023. The motion stated she filed an appearance before judgment. As stated above, this is not true. She did not fax her appearance to the Bridgeport Housing Clerk on March 14, 2023. She also argued that several notice and procedural issues could be defenses in the case. Argument for the motion was marked off as Defendant, Gerald Yoney, had filed an appeal and an appellate stay was in effect.

Defendant, Sarah Yoney, filed her motion to open on similar grounds on January 5, 2024, during the pendency of the appeal.

Plaintiff objected stating that pursuant to Practice Book § 17-4 and General Statutes § 52-212(a) Defendants failed to prove that they did not appear due to accident, mistake or other reasonable cause. Also, they failed to prove that they had a valid legal defense.

The court agrees with Plaintiff. The court finds that Defendants, Sarah Yoney and Theresa Yoney did not file their appearance via fax or any other method with the Housing Court Clerk's Office prior to the court entering judgment of default and possession. Furthermore, the judgment of the court was in compliance with General Statutes § 47a-26¹, and Practice Book §17-30².

The judgment was affirmed by the appellate court on March 19, 2024. Neither Theresa nor Sarah Yoney joined the appeal or made arguments to the Appellate Court that the court erred in entering a judgment against them.

The court believes it can rest upon the fact that Defendants' appearances were filed after judgment entered for failing to appear as illustrated above. Nevertheless, the court will go

¹ If the defendant does not appear within two days after the return day and a motion for judgment for failure to appear and an endorsed copy of the notice to quit is filed with the clerk, the court shall, not later than the first court day after the filing of such motion, enter judgment that the complainant recover possession or occupancy of the premises with the complainant's costs, and execution shall issue subject to the provisions of sections 47a-35 to 47a-41, inclusive.

² (a) If the defendant in a summary process action does not appear within two days after the return day and a motion for judgment for failure to appear and the notice to quit signed by the plaintiff or plaintiff's attorney and endorsed, with his or her doings thereon, by the proper officer or indifferent person who served such notice to quit is filed with the clerk, the judicial authority shall, not later than the first court day after the filing of such motion, enter judgment that the plaintiff recover possession or occupancy of the premises with costs, and execution shall issue subject to the statutory provisions. ...

... (c) In summary process actions, a motion for judgment by default that is sent to the court either electronically or is hand-delivered to the court shall be deemed to be filed on the third business day following such delivery unless the party filing the motion for judgment by default certifies that the motion has also been sent electronically or hand-delivered on the same day to all opposing parties or their counsel.

through the exercise of showing that the motions to open should also be defeated on other grounds.

When reviewing a defendant's motion to open for failure to appear, the court is guided by Practice Book § 17-4. Defendant must prove three elements. First the motion was filed within four months of the judgement. That is not an issue in this case as the first motion to open was filed on March 20, 2023, days after the judgment was entered; and the second motion was filed during an appellate stay.

Second, the court must find that Defendant failed to appear due to some mistake accident or other reasonable cause. That does not exist in this case. Defendants are family members living in the same home. Gerald Yoney was actively engaged in litigation and was represented by counsel for years prior to the judgment entering. It is impossible for the court to contemplate a situation where Mr. Yoney or his counsel would not have advised Sarah Yoney and Theresa Yoney of the consequences of their failure to appear in an eviction action from their home.

On the contrary, the court has encountered other cases where post foreclosure defendants withhold filing appearances for the purposes of delay. When the case is about to go to judgment, or a judgment has entered, the non-appearing defendants suddenly file an appearance and claim they are exempt from the eviction delaying the case even further. Considering the lengthy litigation prior to judgment, this could have been a strategy of the Yoney Defendants.

Third, Defendant must prove they have a valid legal defense. In this case, there is none. Defendants were properly noticed and received all their due process and statutory rights. The only defense to a right or privilege terminated cause of action is a valid lease agreement. This is a post foreclosure summary process action. There was never a valid lease agreement.

Although the court believes its decision is based upon sound legal reasoning and as a matter of law, the motions to open should be denied; in this next section, the court will explore the equitable positions of the parties.

It is well settled that housing court in general and summary process proceedings specifically are matters of equity.

“[T]he determination of what equity requires in a particular case, the balancing of the equities, is a matter for the discretion of the trial court.” (Internal quotation marks omitted.) *Connecticut Bank & Trust Co. v. Winters*, 225 Conn. 146, 162, 622 A.2d 536 (1993). Discretion means “a legal discretion, to be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice.” (Internal quotation marks omitted.) *Hammerberg v. Leinert*, 132 Conn. 596, 604-605, 46 A.2d 420 (1946). Appellate courts are entitled to reverse the court's exercise of its equitable powers only if that exercise was unreasonable. *Connecticut Bank & Trust Co. v. Winters*, supra, 161. Consequently, when [appellate courts] review the exercise of discretion by the trial court, every reasonable presumption will be given in favor of the correctness of its ruling.” (Internal quotation marks omitted.) *Camp v. Booth*, 160 Conn. 10, 13, 273 A.2d 714 (1970). “Equity will not afford its aid to one who by his conduct or neglect has put the other party in a situation in which it would be inequitable to place him.” *Glotzer v. Keyes*, 125 Conn. 227, 231-32, 5 A.2d 1 (1939). The equitable powers of the court are broad, but they are not without limit. “Equitable power must be exercised equitably.” (Internal citations omitted.) *McKeever v. Fiore*, 78 Conn. App. 783, 793, 829 A.2d 846 (2003).

In this case the equities strongly favor the Plaintiff. This case is over four years old. That does not take into account the years of litigation required to obtain a foreclosure judgment against Defendants.

The case began with a Notice to Quit which was served on the named defendant, Gerald Yoney, John Doe and Jane Doe on November 23, 2019, with a quit date of November 30, 2019. Plaintiff's complaint was filed with the court on January 6, 2020. Defendant, Gerald Yoney filed a *pro se* appearance on January 12, 2020, and then was represented by counsel when attorney, Tamra J. Evans filed an appearance on February 16, 2020. Then the court's processing of summary process actions was halted due to the Covid 19 Pandemic.

Defendant, Gerald Yoney, filed his answer and special defenses on April 21, 2021. The first special defense claimed that Plaintiff did not have good title and alleged several equitable special defenses to the underlying foreclosure action which was pending before the Appellate Court. The second special defense claimed that the defendant was over 62 years of age and would need additional time to move out.

It is obvious that the first special defense was defeated when the Appellate Court upheld the judgment of foreclosure in the civil division. The Second special defense is more of an equitable argument that would allow Defendant, Gerald Yoney, to get a longer stay of execution once judgment entered.

Defendant having no special defenses at this point files a motion to dismiss on August 20, 2021, (18 months after the commencement of the lawsuit) claiming that Plaintiff is not the owner of the subject property. This motion was denied. On July 14, 2022, Defendant, Gerald Yoney, files a request for discovery two years after the commencement of the lawsuit.

Then, the day before the case is to go to trial on August 17, 2022, Defendant files for chapter 13 bankruptcy on August 16, 2022. On February 19, 2023, the Chapter 11 Bankruptcy Case (Case Number 22-50410) filed by the defendant, Gerald Yoney, was dismissed with prejudice by the Bankruptcy Court (Manning, J.). Despite this order, Defendant, Gerald Yoney, files for Chapter 13 Bankruptcy again on February 1, 2023. Again, one day before the summary process trial was to begin. On March 2, 2023, the Bankruptcy Court denied Defendant's motion to extend the bankruptcy stay.

On March 3, 2023, the case was set down for the third summary process trial. None of the defendant's appeared in court on that day. When judgment entered, Defendant, Gerald Yoney, filed an appeal with the Appellate Court. From January of 2020 through September 8, 2023, Defendant's paid no use and occupancy to Plaintiff. On March 19, 2024, the judgment of the trial court was affirmed. Then, the Defendants, Sarah and Theresa Yoney, sought to open the judgment.


This litany of delay tactics, frivolous appeals, bankruptcy filings, motions to open, are far too common in foreclosure litigation and the subsequent summary process actions that follow. The abuse of process by savvy defendants thwarts the authority of the court and makes a mockery of the judicial system. In a court of equity, it is the duty of the trial judge to make sure equity is done. Plaintiff has waited too long and spent too much time and money to be denied their judgment when the Defendants have no legal defenses. Any further delay would be unjust, inequitable, and obscene.

So, in addition to the legal basis for denying Defendants' motions to open, the court also finds ample equitable reasons to do so.

CONCLUSION

After reviewing the oral and written arguments of the parties, the relevant law, the court file and the equitable position of the parties, the court denies Defendants, Sarah Yoney and Theresa Yoney's motions to open. As such, the judgment stands and execution can issue immediately.

BY THE COURT


(442318)
Hon. John A. Cirello