The Blow by blow Lyceum Foreclosure Quagmire

02/17/2026

- The plaintiff filed an initial motion but failed to serve the papers on our attorney.
- Based on that motion—served on us, illegally, but not our counsel—a judgment of default was granted. Compounding the error, the judgment was entered in the name of a "new plaintiff" that had never been noticed to us. As a matter of law, such orders cannot bind any party who was not given notice. Nor can any subsequent order or judgment issued in that unnoticed name bind any unnoticed party.
- I received a motion from this unnoticed new plaintiff seeking criminal contempt.
- I responded with a motion to dismiss the case as abandoned. My theory was this: The plaintiff had never informed the court, on the record, that we had an attorney. Therefore, for all purposes visible to the court, we had no attorney. And if we had no attorney, and the only communications the plaintiff could show were with that non-attorney (since they had hidden the attorney's involvement), then nothing before the court had occurred to toll the one-year deadline for the plaintiff to take proceedings. By withholding from the court the fact that we were represented, the plaintiff limited the court's docket to a record showing zero interaction with us. More than a year had passed. The case was abandoned.
- In opposing my motion, the plaintiff did something revealing. They rounded up all the communications they had secretly been having with our attorney—the very communications they had previously withheld from the court—and submitted them as evidence.
- The court took those communications and ruled that they had "stalled" the proceedings, thereby tolling the deadline for the plaintiff to act. The court cited *Myers v. Slutsky* but omitted the crucial part of that decision: that such tolling only occurs when actions constitute a formal or informal appearance. Any appearance requires all papers be served on that appearing attorney. The court's use of the communications just highlights they were substantive.
- Here is what the judge should have done: First, acknowledge that we appeared by attorney, so the deadline was tolled. Second, having recognized our attorney's existence, ensure that our attorney had been properly served with the initial motion papers that started this whole chain. The judge did neither.

- We were intent on forcing the court to rule based solely on the record the plaintiff had created—a record that, by the plaintiff's own design, omitted our attorney. So we appealed. That was January 2012.
- We waited … and waited. Finally, in September 2018, we received an oral argument. In December 2018, a curious decision came down, denying our appeal.
- We tried to address the curiosities:
    - A motion to reargue. Denied.
    - A motion for leave to appeal to the Court of Appeals. Denied.
    - A motion directly to the Court of Appeals for leave to appeal. Denied.
    - An appeal to the Court of Appeals. Dismissed in August 2020, on the ground that we were not appealing from a final judgment (which would be the foreclosure judgment itself, not a pre-foreclosure motion to dismiss). This was signed by Chief Judge Jante Difiore, who later resigned while facing an ethics investigation.
- An appeal to the Court of Appeals. Dismissed in August 2020, on the ground that we were not appealing from a final judgment (which would be the foreclosure judgment itself, not a pre-foreclosure motion to dismiss). This was signed by Chief Judge Janet DiFiore—unusual for a routine procedural dismissal—who later resigned while facing an ethics investigation.
- We endured two cases of COVID resulting in a brutal, undiagnosed case of long COVID. We helped move my parents from Florida to Maine, renting an RV and transporting them without them seeing a single person. We then became full-time assistants to them—handling shopping, driving them to endless medical appointments.
- Eventually, we returned to the fight. We approached the clerk of the Appellate Division in Brooklyn, and the staff of the Presiding Justice, Hector Lasalle. We explained the curiosities. Both suggested we file a motion.
- We labored long and hard over what motion to file. Eventually, we realized the truth: If we could directly address the initial failure to serve, that would topple the entire case—including all the subsequent curiosities.
- **Thus, the planned motion: to vacate the initial decision, regardless of whether the case was abandoned by then or not.** Because if service was never made on our attorney at the outset, nothing that followed can stand. Not as good as abandoned, but, legally speaking, a distinction without much of a difference.