

SHORT FORM ORDER

NEW YORK STATE SUPREME COURT - COUNTY OF QUEENS



Present: **Hon. Laurentina S. McKetney Butler**

IAS PART 28

Justice

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U.S. Bank Trust National Association, not in its individual capacity but solely as Owner Trustee for RCF 2 Acquisition Trust,

Index No.: 719890/2022

Plaintiff(s),

Motion Submission Date: 6/27/2023

Cal. No.: 10

-against-

Seq. No.: 1

Fernando Carrasco a/k/a Fernando T. Carrasco. QPJ17 Management Inc, City of New York Environmental Control Board, City of New York Parking Violations Bureau, State of New York and "John Doe", said name being fictitious, it being the intention of Plaintiff to designate any and all occupants of premises being foreclosed herein, and any parties, corporations or entities, if any, having or claiming an interest or lien upon the mortgaged premises,

Defendant(s).

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Recitation, as required by CPLR 2219(a), the following electronically filed documents were considered in the review of this motion:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion, Affirmations, Affidavits, and Exhibits.....	EF 27 – 42
Opposition Affirmations, Affidavits, and Exhibits.....	EF 46 – 83
Reply Affirmations, Affidavits, and Exhibits.....	EF 84 – 88

Upon the review of the foregoing documents, this motion is decided as follows:

Defendants move pursuant to CPLR §3012(d), compelling plaintiff to accept Defendant's Answer; or in the alternative; vacating defendant's default pursuant to CPLR §§317 and 5015(a)(1) or in the interests of substantial justice.

Pursuant to CPLR §3012(d), upon the application of a party, the court may extend the time to appear or plead, or compel the acceptance of a pleading untimely served, upon such terms as may be just and upon a showing of reasonable excuse for delay or default.

Defendants were served pursuant to BCL §306 and in support of the application defendants submit documentation demonstrating that the summons and complaint mailed by the Secretary of State was not received until after the answer was due. Defendants contend that due to the late delivery of the summons and complaint their answer should be accepted.

In opposition, the affirmation as well as the word certification affirmation of Aleksandr Altshuler, Esq., are unsigned and therefore lack any probative value.

Given the short delay in serving the answer and public policy that favors the courts deciding matters on the merits, in the interest of justice, the motion by defendant QPJ17 Management Inc, to compel plaintiff to accept its answer is granted.

The answer previously served by defendants is deemed served and shall be accepted.

This constitutes the Decision and Order of the court.

Dated: September 27, 2023
Jamaica, New York



Laurentina S. McKetney Butler, J.S.C.

