
PARTIES/ATTORNEYS

Plaintiff	Nationstar Mortgage LLC	McCalla Raymer Leibert Pierce, LLP Nabeel M. Zuberi Antonia Lesgold
Defendant	Tony Larks	No appearance
Defendant	Johannes Johnson	No appearance
Defendant	Internal Revenue Service	Stipulation excusing further participation entered 12/23/2024
Defendant	The Secretary of Housing and Urban Development	Stipulated judgment entered 12/2/2024

TENTATIVE RULING

As discussed more fully below, the court grants the motion to vacate the judgment against Johannes Johnson.

MEMORANDUM

On October 24, 2024, plaintiff Nationstar Mortgage LLC filed its complaint to judicially foreclose on the real property commonly known as 1335 Dolcetto Lane, Santa Maria, California 93458 (the “Property”). It alleged that Tony Larks and Johannes Johnson were the owners of the Property and that they failed to pay the installment payment that was due on January 1, 2024, and the subsequent months. On December 30, 2024, the court ordered that summons be served by publication on Tony Larks and Johannes Johnson, which was accomplished. On March 11, 2025, the clerk entered default against defendants Johannes Johnson and Tony Larks (“Entry of Default”). On April 24, 2025, the Court entered a Judgment of Foreclosure and Order of Sale in plaintiff’s favor (the “Judgment”).

While preparing this property for sheriff’s sale, plaintiff’s attorney discovered that Johannes Johnson died on or about December 22, 2023, *before* this action was initiated. (Lesgold Decl., ¶ 3.) Plaintiff now moves to set aside the judgment against Johnson only so that it may instead substitute her estate as a defendant in the action.

The court may, on motion of either party after notice to the other party, set aside any void judgment or order. (Code Civ. Proc., § 473, subd. (d).)

Lack of personal jurisdiction renders a default judgment void, so that it may be vacated at any time. (*Strathvale Holdings v. E.B.H.* (2005) 126 Cal.App.4th 1241, 1249.) It is settled that a judgment for or against a dead person is void only if the plaintiff or defendant was dead before the action was begun because he *never was a party*, i.e., the court never acquired jurisdiction of the person. (*Walter v. National Indem. Co.* (1970) 3 Cal.App.3d 630, 634; *Woolley v. Seijo* (1964) 224 Cal.App.2d 615, 620.) Here, plaintiff provides evidence that Johnson died on December 22, 2023, which is well before the case was commenced.¹ The court thus finds that it never acquired jurisdiction over defendant Johnson. The judgment against her is void and the court now sets it aside.

Plaintiff reports that it intends to substitute Johnson's estate in as a party. The court notes that a probate or trust estate is not a legal entity; it is simply a collection of assets and liabilities. As such, it has no capacity to sue, be sued or defend an action. Any litigation must be maintained by, or against, the executor, administrator or trustee of the estate. (*Galdjie v. Darwish* (2003) 113 Cal.App.4th 1331, 1344; *Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 496; *Portico Mgmt. Group, LLC v. Harrison* (2011) 202 Cal.App.4th 464, 474—judgment against trust was meaningless and unenforceable.)

The motion is granted.

¹ Johnson was allegedly shot by Anthony Kevin Larks, who is presumably Tony Larks. He was charged with her murder. (Case No. 23CR08965.) The court takes judicial notice of this criminal case on its own motion.