New York
Official Reports

176 A.D.3d 486, 110 N.Y.S.3d
694, 2019 N.Y. Slip Op. 07348

1 **NYCTL 1998-2 Trust et al., Respondents,

v

Alanis Realty LLC et al.,
Appellant, et al., Defendants.
598 Eagle Avenue LLC, Proposed
Intervenor-Respondent-Appellant.

Supreme Court, Appellate Division,
First Department, New York
10059, 260269/14, M-7020
October 10, 2019

CITE TITLE AS: **NYCTL 1998-2**
Trust v **Alanis** Realty LLC

HEADNOTE

Mortgages
Foreclosure
Default Judgment—Failure to Demonstrate Reasonable Excuse or Meritorious Defense

Joseph A. Altman P.C., Bronx (Joseph A. Altman of counsel), for appellant.
Desiderio, Kaufman & Metz PC, New York (Jeffrey R. Metz of counsel), for 598 Eagle Avenue, respondent-appellant.
The Law Office of Thomas P. Malone, PLLC, New York (Christopher Kohn of counsel), for **NYCTL 1998-2** Trust and The Bank of New York Mellon, respondents.

Order, Supreme Court, Bronx County (Ben R. Barbato, J.), entered on or about October 4, 2018, to the extent it denied defendant **Alanis** Realty LLC's motion to vacate the judgment of foreclosure and sale entered upon its default, unanimously affirmed, and appeal therefrom to the extent it denied the proposed intervenor's cross motion to intervene as moot, dismissed, without costs, as academic.

Defendant failed to demonstrate a reasonable excuse for its default and a meritorious defense to this foreclosure action (*see* CPLR 5015 [a] [1]; *Facsimile Communications Indus., Inc. v NYU Hosp. Ctr.*, 28 AD3d 391 [1st Dept 2006]). Contrary to defendant's contention, CPLR 317, which does not require the showing of a reasonable excuse for default, does not apply to this action (Administrative Code of City of NY § 11-340).

Defendant, the owner of the foreclosed property, claims that it did not receive notice of the summons and complaint served on the Secretary of State pursuant to Limited Liability Company Law § 303. This is not a reasonable excuse, given defendant's failure to keep a current address on file with the Secretary ***487** of State for at least five years (*see* ***NYCTL** 2015-A Trust v Diffo Props. Corp.*, 171 AD3d 538 [1st Dept 2019]).

Defendant's proposed answer and its principal's affidavit contain only conclusory assertions, which do not establish a meritorious defense (*see East N.Y. Sav. Bank v Sun Beam Enters.*, 234 AD2d 131, 132 [1st Dept 1996]). Defendant's claimed willingness to pay the tax lien well after the property was sold at auction is not a defense (***NYCTL** 2015-A Trust*, 171 AD3d at 539). Nor did defendant provide any support for its contention that the sales price was unconscionable.

The proposed intervenor, as the subsequent purchaser of the property, should have been permitted to intervene in Supreme Court. However, now that we are affirming, this issue is academic.

We have considered the parties' remaining arguments for affirmative relief and find them unavailing. Concur—Renwick, J.P., Gische, Kapnick, Gesmer, Moulton, JJ.

Motion to strike brief and dismiss cross appeal granted to the extent of dismissing the cross appeal as academic.