

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

Towd Point Mortgage Trust 2017-3, U.S. : Case Number: CV-2024-08-3426
Bank National Association, as Indenture
Trustee

Plaintiff, : Judge Kelly L. McLaughlin

vs. :

Steven Nicholas Waszil, et al. : MOTION TO RECONSIDER
:
Defendants.

Now comes the Plaintiff, Towd Point Mortgage Trust 2017-3, U.S. Bank National Association, as Indenture Trustee by and through counsel, and hereby moves the Court to reconsider the Order dismissing the Plaintiff's Complaint. In support of this Motion, Plaintiff respectfully states as follows:

I. FACTUAL BACKGROUND:

On May 5, 2025 the Clerk's docket indicates that a Magistrate's Order was filed. This order says "Plaintiff shall file a motion for default judgment within 14 days from the date of this order, or the court will dismiss the case for lack of prosecution." Plaintiff's counsel shows no receipt from the clerk regarding this order via either email or regular mail. As neither Plaintiff, nor its counsel, had notice of the order, it failed to file a motion for default judgment and the Court dismissed the case without prejudice.

II. LEGAL ANALYSIS

Plaintiff's Complaint was dismissed for lack of prosecution on May 21, 2025 because there was a failure to file a motion for default judgment in response to the Court's May 5, 2025

order. As the entry was without prejudice, it was not a final appealable order, and on this basis plaintiff moves this Court to reconsider its dismissal, as opposed to a motion for relief under Civil Rule 60.

“A dismissal without prejudice is generally not a final appealable order because the ruling does not prevent the party from refiling. However, a dismissal without prejudice is final and appealable where the appellant is precluded from refiling as a result of the dismissal. *National City Commercial Capital Corp. v. AAAA at Your Serv., Inc.*, 114 Ohio St.3d 82, 2007–Ohio–2942, 868 N.E.2d 663.” *Wells Fargo Bank, Natl. Assn. v. Wick*, 2013-Ohio-5422 (Ohio Ct. App. Dec. 12, 2013).

The mechanism for appealing a non-final order is a motion to reconsider. *Fifth Third Bank v. Rose*, 2008-Ohio-3919 (Ohio Ct. App. July 29, 2008). A trial court has plenary power in entertaining a motion for reconsideration prior to entering a final judgment. *Vanest v. Pillsbury Co.*, 124 Ohio App. 3d 525, 535, 706 N.E.2d 825, 832 (1997). A motion for reconsider is “the proper recourse” when there is no final appealable order. *Lee v. Joseph Horne Co., Inc.*, 99 Ohio App. 3d 319, 324, 650 N.E.2d 530, 533 (1995).

Plaintiff’s counsel, as evidenced per the affidavit of Marilyn Ramirez, which is attached, did not receive the Order. As the Ohio Supreme Court has held:

We reiterate our longstanding belief that the interests of justice are better served when Ohio's courts address the merits of claims and defenses at issue. The extremely harsh sanction of dismissal should be reserved for cases when an attorney's conduct falls substantially below what is reasonable under the circumstances evidencing a complete disregard for the judicial system or the rights of the opposing party.

Moore v. Emmanuel Family Training Ctr., Inc., 18 Ohio St. 3d 64, 70, 479 N.E.2d 879, 885 (1985)

WHEREFORE, Plaintiff prays that the Court reinstate the instant cause of action and for all other just and proper relief in the premises.

Respectfully submitted,

/s/ Maria T. Williams

Maria T. Williams (0079972)

Reisenfeld & Associates

Attorneys for Plaintiff

2035 Reading Road

Cincinnati, OH 45202

voice: (513) 322-7000

Maria.williams@rslegal.com

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served by regular U.S. Mail, postage prepaid, this 18th day of June, 2025, upon the following:

Steven Nicholas Waszil
2152 Glenmount Ave
Akron, OH 44319

Unknown Spouse, if any, of Steven Nicholas Waszil
2152 Glenmount Avenue
Akron, OH 44319

MV Realty of Ohio, LLC
CT Corporation System
4400 Easton Commons Way, Suite 125
Columbus, OH 43219

/s/ Maria T. Williams

Maria T. Williams (0079972)

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

TOWD POINT MORTGAGE TRUST 2017-3, U.S.
BANK NATIONAL ASSOCIATION, AS
INDENTURE TRUSTEE

Case Number: CV-2024-08-3426

Plaintiff, Judge KELLY L MCLAUGHLIN

vs.

STEVEN NICHOLAS WASZIL, et al.

Defendant.

AFFIDAVIT OF MARILYN RAMIREZ

COUNTY OF HAMILTON:

:SS

STATE OF OHIO :

Now comes the Affiant, Marilyn Ramirez, and after being first duly cautioned and sworn, states as follows:

1. Affiant is an attorney with the law firm of Reisenfeld & Associates, LPA, LLC, in the position of Associate Attorney.

2. In my position, I have the care and responsibility as attorney of matters related to foreclosures, up to and through foreclosure sales, which includes the instant case.

3. Reisenfeld and Associates, LPA, LLC has standards and procedures in place to guarantee court deadlines are met. This includes the use of a case management system and a calendaring system to ensure deadlines are properly addressed.



4. Our office shows no receipt of the judgment entry requiring Plaintiff to file a motion for default judgment within 14 days of May 5, 2025 or the court would dismiss the case for lack of prosecution.

FURTHER AFFIANT SAYETH NAUGHT.


Affiant, Marilyn Ramirez

Subscribed and sworn to before me, by Marilyn Ramirez, personally known to me, this 18th day of June, 2015.


Notary Public



TIFFANY BENTLEY
Notary Public, State of Ohio
My Commission Expires
January 29, 2030
COMMISSION: 2025-RE-886308