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| BJL Realty LLC v Nordic LLC |
| 2020 NY Slip Op 33179(U) |
| August 26, 2020 |
| Supreme Court, Kings County |
| Docket Number: 517311/19 |
| Judge: Lawrence S. Knipel |
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At an IAS Term, Part 57 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 26th day of August, 2020.

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

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BJL REALTY LLC,

Plaintiff,

- against -

Index No. 517311/19

NORDIC LLC d/b/a BUDIN and CRYSTAL PEI,

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc. Nos.

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____

17-25

Opposing Affidavits (Affirmations) _____

26-38

Upon the foregoing papers in this action by a former landlord for additional rent, defendants Nordic LLC d/b/a Budin and Crystal Pei (collectively, defendants) move (in motion sequence [mot. seq.] one), by order to show cause, for an order, pursuant to CPLR 317, 2005 and 5015 (a), vacating the default entered against them on January 17, 2020, restoring defendants' answer and rescheduling the Alternative Dispute Resolution (ADR) conference.

Defense counsel affirms that he "inadvertently failed to appear at an [ADR] Conference on January 17, 2020." Consequently, this court issued a January 17, 2020

order on default striking defendants' answer and setting the action down for an inquest on February 24, 2020.

Defense counsel explains that on September 23, 2019 opposing counsel notified him that an ADR conference was scheduled for November 25, 2019, which "was in direct conflict with a case scheduled for trial in Kings County Housing Court." Defense counsel claims that he immediately notified plaintiff's counsel of the scheduling conflict "but did not receive a response for two months despite repeated emails sent to Plaintiff's counsel." On November 22, 2019, plaintiff's counsel agreed to adjourn the November 25, 2019 ADR conference to a later date. Defense counsel "drafted a stipulation of adjournment with a blank adjourn date and emailed it to opposing counsel along with an affidavit of actual engagement." According to defense counsel, plaintiff's counsel signed the stipulation and returned it to him, however, "[t]here was no communication from Counsel's office regarding the outcome of the November 25, 2019 appearance."

Defense counsel affirms that "[m]y office was not made aware of the January 17, 2020 [ADR] appearance date until January 28, 2020 when we received a copy of the Order via first class mail from opposing counsel." Defense counsel explains that "[i]t is this firm's practice to immediately insert assigned court dates to the law firm calendar" and "on the firm's eTrac account[,] "[h]owever, due to clerical error, Defendants' counsel failed to place the matter on eTrac and, thus, this office was not notified of the January 17, 2020 court appearance." Defense counsel thus contends that defendants'

default should be excused, pursuant to CPLR 2005, due to law office failure.

Defense counsel asserts that “[t]his office was not aware of the [ADR] Conference thus, our failure to appear was unintentional; thus Defendants have raised a reasonable excuse for its default.” Defense counsel further argues that defendant have raised numerous affirmative defenses in their answer, including the fact that plaintiff failed to use commercial reasonable efforts to relet the premises, as required under the lease. Defense counsel argues that he promptly prepared the instant motion to vacate within one week of being notified of the default, and thus, plaintiff cannot claim any prejudice. Defense counsel asserts that “[h]aving demonstrated both a reasonable excuse and a meritorious defense for its default, the Court is urged to grant Defendants’ motion and afford [them] a fair opportunity to defend [themselves] in this action.”

Plaintiff, in opposition, argues that defendants’ motion should be denied “as the Defendants have failed to demonstrate a meritorious defense in this action or a reasonable excuse for their default.” Plaintiff also contends that defendants’ instant application should be denied because “Defendants have failed to submit an affidavit of someone with personal knowledge, and instead rely upon a conclusory, boilerplate Answer.”

Where a default in appearing in court results from law office failure, the court may “exercise its discretion in the interest of justice to excuse delay or default . . .” pursuant to CPLR 2005 (*see JP Morgan Chase Bank, N.A. v Russo*, 121 AD3d 1048, 1049 [2014]). Here, in the court’s discretion, defendants’ motion to vacate their default, restore their

answer and reschedule the ADR conference is granted. Accordingly, it is hereby

ORDERED that defendants' motion (in mot. seq. one) is granted to the extent that this court's January 17, 2020 order is vacated, defendants' answer is restored and the ADR conference will be rescheduled.

This constitutes the decision and order of the court.

E N T E R,

J. S. C.

Justice Lawrence Knipel

KINGS COUNTY CLERK
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