Brooklyn Adult Care Ctr., LLC v Garrett
2025 NY Slip Op 35264(U)
May 30, 2025
Civil Court of the City of New York, Kings County
Docket Number: Index No. 309120/24
Judge: Madalina Danescu
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART C

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BROOKLYN ADULT CARE CENTER, LLC
DBA BROOKLYN ADULTCARE CENTER,

Petitioner,

-against-

LAWRENCE GARRETT,

Respondent.

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Index No. 309120/24

DECISION/ORDER
Motion Seq. 1

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in review of this motion.

	Papers Numbered
Oder to Show Cause w/ Affidavit in Support [NYSCEF Doc. No. 14]	1
Supplemental Affirmation and Affidavit in Support, and Memorandum of Law [With Exbibits A-E] [NYSCEF Doc. Nos. 28-35]	2
Affirmations in Opposition [With Exhibits 1-2] [NYSCEF Doc. Nos. 36-39]	3

After argument held on May 13, 2025, and upon the foregoing cited papers, the decision and order on these motions is as follows:

FACTUAL AND PROCEDURAL HISTORY

This is a summary holdover proceeding commenced by Brooklyn Adult Care Center, LLC d/b/a Brooklyn Adultcare Center ("petitioner"), against Lawrence Garrett ("respondent"). The petition seeks possession of 2830 Pitkin Ave, Room 328, Brooklyn, NY 11208 (the "subject premises" or "apartment") for breach of the occupancy agreement for failure to pay rent and failure to comply with facility rules and the Admission Agreement. (*see* NYSCEF Doc. No. 1).

On March 12, 2025, the court (Hon. Agata Rumprecht-Behrens) issued a Decision and Order after inquest, granting petitioner a final judgment of possession against respondent. (*see* NYSCEF Doc. No. 10).

Respondent filed a pro-se order to show cause to vacate the default judgment after inquest, obtained counsel, and submitted supplemental papers in support of his application. In his papers, respondent states he has a reasonable excuse for failing to appear and meritorious defenses.

Petitioner is an adult care facility where respondent has lived in for over two years. Respondent states he is visually impaired, that he cannot read without assistance and usually requires the assistance of his case manager to read documents aloud for him. Respondent alleges that petitioner is in charge of his mail and that he does not receive all mail sent to him.

Furthermore, respondent did not know that he was signing off on his own termination notice in December 2023 because the director of petitioner, who had respondent sign off, did not inform him what he was signing.

As to the petition, respondent alleges he not aware that he was being served with legal documents. Respondent avows he only remembers someone he did not know coming to his room. According to respondent, petitioner usually has all guests sign in and calls upstairs to the residents to announce them. Due to his confusion and frustration that petitioner allowed a stranger into his room, he believed it was someone trying to solicit.

Respondent avers that petitioner should have informed him verbally if his tenancy was at risk, as it is aware he is visually impaired, or that it otherwise should have advised him of the instant proceeding. Respondent states the decision and order after inquest was the first time he became aware of this proceeding, because he received the decision in the mail and asked his case worker to read it to him.

After learning of the default, respondent was hospitalized but he filed the pro-se order to show cause to vacate the default immediately upon being released. He had to take an Uber to the courthouse to do so.

Respondent denies the allegations in the termination and petition and states the first time he was made aware of them was when his attorney read them to him over the phone.

Further, respondent alleges that petitioner did not follow procedure in initiating and maintaining the instant proceeding and failed to provide him proper services as required. Respondent argues that petitioner is required to assist residents to develop a discharge plan if they can no longer reside in the facility, assist in maintaining benefits, and assist in transportation to essential appointments such as court dates.

Other meritorious defenses alleged by respondent include, that many alleged offenses that form the basis of his eviction are not in violation of 18 NYCRR § 487.5(f) or Social Services Law ("SSL") 461, as alleged in the pleadings, and failure to serve a notice to cure. Respondent also alleges that petitioner failed to provide him with reasonable accommodations and failed to

provide required case management or medication management. Respondent also alleges the termination notice is too vague.

In opposition, petitioner argues that respondent has not provided reasonable excuse for failing to appear where he was personally served with the petition. Annoyance at being served papers in his room, petitioner argues, is not a valid reason for respondent not to have asked for assistance in reading those documents. Petitioner also points out that respondent does not discuss the court notices mailed to him for the December 2024, January 2025 and March 2025 court appearances.

Further, petitioner discounts respondent's claims that he does not recall smoking in his room, attaching pictures that appear to show respondent engaging in such behavior, and points out that respondent ignores the allegations of excessive drinking.

DISCUSSION

In order to grant respondent's application, the court must determine whether to vacate respondent's failure to appear in court prior to filing the instant order to show cause.

A default judgment against a party may be vacated in the court's discretion upon a showing of a reasonable excuse for default and a meritorious defense to the proceeding. (*See* CPLR §5015(a)(1); *Kapoor v Interzan LLC*, 172 AD3d 519, 520, 2019 NY Slip Op 03745 [1st Dept 2019], *citing Eugene Di Lorenzo, Inc. v A. C. Dutton Lumber Co.*, 67 NY2d 138, 141, 501 NYS2d 8 [1986]; *Abrams v City of NY*, 13 AD3d 566, 566 [2d Dept 2004]).

In addition to the grounds set forth in CPLR §5015(a)(1), the court retains inherent discretionary powers to vacate its own default judgment "for sufficient reason and in the interests of substantial justice." (*Woodson v Mendon Leasing Corp*, 100 NY2d 62, 68, 760 NYS2d 727 [2003]).

What constitutes a reasonable excuse lies within the sound discretion of the court. (*Chevalier v 368 E 148th Street Associates, LLC*, 80 AD3d 411, 413. 914 NYS2d 130 [1st Dept 2011]; *SS Constantine & Helen's Romanian Orthodox Church of Am. v Z. Zindel, Inc.*, 44 AD3d 744, 745 [2d Dept 2007]; *Abrams v City of NY*, 13 AD3d at 566).

Courts have considered relevant factors such as the defaulting party's willfulness and any delay in seeking to vacate the default. (*Gluck v McDonough*, 139 AD3d 628, 629, 33 NYS3d 36 [1st Dept 2016], *citing Performance Const Corp v Huntington Bldg. LLC*, 68 AD3d 737, 888 NYS2d 892 [2d Dept 2009]).

Moreover, there is a strong public policy of resolving cases on the merits rather than on default. (*see Chevalier v 368 E. 148th St. Assoc., LLC*, 80 AD3d at 413-414 ["The determination whether a reasonable excuse has been offered is *sui generis* and should be based on all relevant factors, among which are the length of the delay chargeable to the movant, whether the opposing party has been prejudiced, whether the default was willful, and the strong public policy favoring the resolution of cases on the merits."], *citing Harcztark v Dr. Variety, Inc.*, 21 AD3d 876, 876-877 [2d Dept 2005]).

EXCUSABLE DEFAULT

Respondent's reasoning for his failure to appear does not strictly adhere to the standard for reasonable excuse under CPLR §5015(a)(1) - he does not adequately explain why he did not seek assistance in reading the documents given to him when he was apparently personally served with the petition, nor does he discuss the three sets of court postcards mailed to him in October 2024, December 2024, and January 2025, advising him of court appearances in December 2024, January 2025 or Mach 2025.

However, under the circumstances, this court exercises its inherent powers to find that respondent's default was excusable in the interests of justice.

Although respondent did not appear in court at three court dates, he does allege that petitioner controls his mail and that he does not always receive mail intended for him. As such, it is possible respondent did not receive court postcards.

Furthermore, as petitioner knew or should have known of respondent's disability, the failure to ensure that respondent was properly able to read and understand the petition as served on him constitutes a reasonable excuse. It would have been simple to send respondent's case manager, or another staff member, to respondent's room with the process server to ensure respondent understood he was being served with court papers.

Finally, respondent's allegations that petitioner's director had him sign off on his own termination notice without advising him what he was signing remain unrefuted despite petitioner providing an affidavit from this director, Jack Elie, in opposition to respondent's order to show cause and supplemental papers. Petitioner had the opportunity to deny or explain this claim but failed to do so.

As such, these facts are deemed admitted. (*see Kuehne & Nagel, Inc. v Baiden*, 36 NY2d 539, 544 [1975]) ["Facts appearing in the movant's papers which the opposing party does not

controvert, may be deemed to be admitted"]; *Madeline D'Anthony Enters., Inc. v Sokolowsky*, 101 AD3d 606, 609 [2d Dept. 2012]; *Schneider Fuel Oil, Inc., v DeGennaro*, 238 AD2d 495, 496 [2d Dept. 1990]).

Certainly, failure to advise respondent of what he was signing off on could explain his failure to appear and provides a reasonable excuse.

Finally, petitioner does not show or allege prejudice if this court were to vacate respondent's default. Even if petitioner could allege prejudice by the December 2024 through April 2025 delay, it failed to do so and, in any case, prejudice cannot be established by mere delay. Prejudice is shown where the nonmoving party is "hindered in the preparation of his case or has been prevented from taking some measure in support of his position." (*Loomis v Civetta Corinno Constr. Corp.*, 54 NY2d 18, 23, 444 NYS2d 571 [1981]; *Jacobson v McNeil Consumer & Specialty Pharmaceuticals*, 68 AD3d 652, 654-655, 891 NYS2d 387 [1st Dept 2009] [prejudice does not occur simply because a defendant has to expend additional time preparing its case] [internal citations omitted]).

As such, petitioner has failed to allege prejudice, and the court cannot overlook the strong public policy of resolving cases on their merits.

Given the foregoing, the court exercises its discretion in finding an excusable default.

MERITORIOUS DEFENSE

Respondent alleges severally potentially meritorious defenses in support of his application to vacate the default, most of which are largely unaddressed and unopposed by petitioner.

Petitioner's sole argument is that there are photographs of respondent with open alcohol containers in the hallway and in his room, and ash on the floor of his room. This, in addition to his testimony at inquest, petitioner's agent Jack Elie alleges proves respondent's excessive drinking and smoking at the premises.

However, even if these claims are true, they do not address or oppose the majority of the alleged defenses, including failure to serve respondent with a notice to cure, failure to advise respondent he was signing his own termination notice, failure to follow proper procedure and protocol in commencing and maintaining this proceeding, failure to assist respondent with a discharge plan, failure to provide him with reasonable accommodations, defective termination

notice or that many alleged behaviors alleged by petitioner, even if true, are not violations of the law, as claimed in the predicate and petition.

Many of these alleged defenses, if proven, would entitle respondent to a judgment of dismissal in his favor. In any case, the court notes that respondent need not prove his defenses at this time and need only allege the essential elements to raise a viable defense. (see *Option One Mtge. Corp. v Massanet*, 2009 NY Slip Op 30286[U], *9 [Sup Ct, Richmond County 2009]; *Anamdi v Anugo*, 229 AD2d 408, 409 [2d Dept 1996]; *City of NY v Rogers*, 165 Misc. 2d 240, 242 [Civ Ct, Kings County 1995]).

As there are both excusable default and potentially meritorious defenses, respondent's OSC to vacate his default is granted and the judgment and warrant are vacated.

CONCLUSION

Based on the foregoing, it is respondent's motion is granted and the proceeding is adjourned to July 1, 2025 at 9:30 for all purpose, including settlement or trial. Any answer must be filed on or before June 27, 2025.

This constitutes the decision and order of the court. It will be posted on NYSCEF.

Dated: May 30, 2025
Brooklyn, New York

SO ORDERED,

HON. MADALINA DANESCU
Judge, Housing Part