Oxford Props. Group, LLC v Lee
2026 NY Slip Op 31137(U)
March 19, 2026
Supreme Court, New York County
Docket Number: Index No. 657116/2020
Judge: Kathleen Waterman-Marshall

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. KATHLEEN WATERMAN-MARSHALL** **PART** **31**

Justice

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OXFORD PROPERTIES GROUP, LLC,JONATHAN ZANDI,

Plaintiff,

- v -

JENNIFER LEE, JAEHYUK RHEE, HYE SUNG MIN, CORCORAN SUNSHINE MARKETING GROUP, MICHELE HINOJOS

Defendant.

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INDEX NO. 657116/2020

MOTION DATE 08/08/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Upon the foregoing documents, the motion by defendants Jennifer Lee, Jaehyuk Rhee, and Hey Sung Min ("Defaulting Defendants") to vacate this Court's July 16, 2025 default judgment order pursuant to CPLR 5015 and 2005; and to dismiss the entire action pursuant to CPLR 3211(a)(7) and RPL § 442-d, is granted in part.

Background

This matter was administratively transferred to Part 31 and a preliminary conference was held on July 2, 2025. Counsel for plaintiffs appeared on July 2, 2025; however, there was no appearance on behalf of the Defaulting Defendants. The preliminary conference was adjourned to July 16, 2025, given defendants' failure to appear; however, the Defaulting Defendants failed to appear for a second time. The Court, by order of even date, granted plaintiffs a default judgment against the Defaulting Defendants.

The Defaulting Defendants seek to excuse their default, and vacate the July 16, 2025 default judgment order, contending that prior to the transfer of this matter to Part 31, the matter was dormant for years, the firm representing Defaulting Defendants had a contentious dissolution, and that there was a dispute between the former law partners as to who represented the Defaulting Defendants. In essence, counsel for the Defaulting Defendants alleges that the failure to appear was inadvertent and due to law office failure.

Upon vacatur of their default, Defaulting Defendants further seek dismissal of the complaint in its entirety. They contend that plaintiff's complaint fails to properly allege that plaintiffs were licensed real estate entities and salespersons in accordance with RPL § 442-d. Consequently, Defaulting Defendants contend that the entire matter must be dismissed pursuant to CPLR 3211(a)(7).

In opposition, plaintiffs first contend that Defaulting Defendants' motion should be rejected as procedurally defective, as missing a memorandum of law and asserting legal arguments within an attorney affirmation. On the merits, plaintiff argue that Defaulting Defendant's excuse of law office failure is insufficient. As to dismissal, plaintiffs argue that the complaint states that they are a licensed real estate entity and salesperson.

Discussion

I. Procedural Irregularities

The Uniform Rules provide that "Affidavits shall be for a statement of the relevant facts, and briefs shall be for a statement of the relevant law" (22 NYCRR § 202.8[c]). Defaulting Defendants have not submitted a memorandum of law in support of their motion, instead they have included legal arguments in their counsel's affirmation, resulting in a "briefirmation". While this is not appropriate, the Court excuses the improper form to reach the merits of the motion. This is not a situation in which a party affirmation has been improperly used to advance legal arguments.[1]

II. Vacate Default

A party moving to vacate a default under CPLR 5015(a) must demonstrate a reasonable excuse for the default and a meritorious defense (*Eugene Di Lorenzo, Inc. v A.C. Dutton Lumber Co.*, 67 NY2d 138, 141 [1986]; *Kassiano v Palm Mgt. Corp.*, 95 AD3d 541 [1st Dept 2012]). "The determination of whether a reasonable excuse has been offered is sui generis and should be based on all relevant factors" (*Chevalier v 368 E. 148th Street Assocs., LLC*, 80 AD3d 411, 413-14 [1st Dept 2011]). Among those factors 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" (*id.*; *see also Mejia v Ramos*, 113 AD3d 429, 430 [1st Dept 2014]). The determination of whether an excuse is reasonable is left to the sound discretion of the motion courts (*Navarro v A. Trenkman Estate, Inc.*, 279 AD2d 257 [1st Dept 2001]).

"[C]ertain law office failures may constitute reasonable excuses" (*Mutual Mar. Off., Inc. v Joy Constr. Corp.*, 39 AD3d 417, 419 [1st Dept 2007]; *see also Goodwin v New York City Hous. Auth.*, 78 AD3d 550, 551 [1st Dept 2010]). CPLR § 2005 provides that the "court shall not, as a matter of law, be precluded from exercising its discretion in the interest of justice to excuse delay or default resulting from law office failure" (CPLR § 2005; *see also SS Constantine & Helen's Romanian Orthodox Church of America v A. Zindel, Inc.*,44 AD3d 744, 745 [2d Dept 2007] [law office failure a reasonable excuse where "the failure of the plaintiff's counsel to oppose the motion for summary judgment was isolated and unintentional and with no evidence of willful neglect"]).

Defaulting Defendants' counsel has provided a reasonable excuse for failing to appear at the conferences, namely law office failure. Counsel's prior firm had a contentious dissolution, there was confusion as to which attorney was representing the Defaulting Defendants, and client files went missing during the dissolution. Similar circumstances have been found to constitute reasonable law office failure by the Appellate Division, First Department (*Apple Bank for Sav. v*

[1] The Court notes that all parties' submissions on this motion do not clearly differentiate between the relief sought, and comingle the arguments on dismissal and vacatur.

Fort Tyron Apartments Corp., 44 AD3d 497 [1st Dept 2007]). Furthermore, the delay attributable to the Defaulting Defendants is *de minimis*. Defaulting Defendants filed this motion within weeks of the default judgment order. Prior to the transfer of this matter to Part 31, there had been no activity in this matter for years. The parties did not seek to have this matter restored to the Court's calendar, and it was only upon the Court's scheduling of a conference that any activity occurred in this matter. Simply put, a month's delay is insignificant in light of the four years of no activity in this matter. Nevertheless, the default and this motion practice could have easily been avoided if Defaulting Defendants' counsel had responded to opposing counsel, or advised the Court of difficulties with representation and sought an adjournment to determine which attorney represented the Defaulting Defendants.

Defaulting Defendants have also demonstrated a meritorious defense. The affidavit of Jennifer Lee sets forth the specific facts as to why Defaulting Defendants contend that plaintiffs are not entitled to a commission, namely that: plaintiffs did not show the purchased premises to Defaulting Defendants, plaintiffs were terminated by Defaulting Defendants before Defaulting Defendants first viewed the purchased property, and that plaintiffs were not the procuring cause of the sale. Consequently, the July 16, 2025 order granting plaintiffs a default judgment is vacated.

III. Dismissal

On a motion to dismiss for failure to state a claim under CPLR 3211(a)(7), the complaint is afforded the benefits of liberal construction, a presumption of truth, and any favorable inference *(see e.g. M & E 73-75, LLC v 57 Fusion LLC*, 189 AD3d 1 [1st Dept 2020]; *Askin v Department of Educ. of City of N.Y.*, 110 AD3d 621, 622 [1st Dept 2013]). The motion must be denied if, from the four corners of the pleadings, "factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*Polonetsky v Better Homes Depot*, 97 NY2d 46, 54 [2001] [internal quotation omitted]). A complaint should not be dismissed so long as, "when the plaintiff's allegations are given the benefit of every possible inference, a cause of action exists," and a plaintiff may cure potential deficiencies in its pleading through affidavits and other evidence (*R.H. Sanbar Projects v Gruzen Partnership*, 148 AD2d 316, 318 [1st Dept 1989]). However, bare legal conclusions and factual allegations which are inherently incredible or contradicted by documentary evidence are not presumed to be true (*Mark Hampton, Inc. v Bergreen*, 173 AD2d 220 [1st Dept 1991]).

Dismissal on the basis that the complaint fails to comply with RPL § 442-d is denied. RPL § 442-d requires that real estate brokers or salespersons be licensed in order to maintain an action to recover a real estate commission (*see e.g. Cooper v Arbor Realty Trust, Inc.*, 239 AD3d 566 [1st Dept 2025]; *Kavian v Vernah Homes Co.*, 19 AD3d 649, 650 [1st Dept 2005]). The verified complaint states that plaintiff Zandi was licensed as a real estate agent working under Keller Williams NYC when he first met defendants (NYSCEF Doc. No. 18 at ¶ 20).[2] Furthermore, plaintiff Zandi's license is provided in the record (NYSCEF Doc. No. 48). The

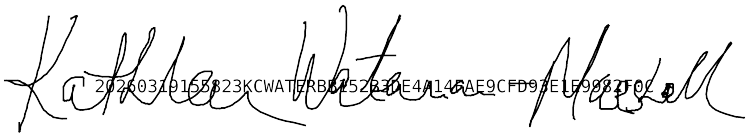
[2] To the extent that plaintiffs rely on an amended verified complaint to further establish that they are duly licensed, there is no proof in this record that the complaint was ever amended. Notably, plaintiff's cross-motion to amend the verified complaint was denied as academic by the prior jurist (NYSCEF Doc. No. 56). Accordingly, the Court cannot rely on the proposed amended complaint. The record does however demonstrate that as part of plaintiffs' motion to amend the caption, plaintiff Zandi provided his real estate license; this the Court may rely upon.

seriousness of Defaulting Defendants' dismissal request is doubtful given that their reply papers do not mention dismissal.

Accordingly, it is

ORDERED that defendants' motion granted to the extent of vacating their default and the March 26, 2026 inquest and otherwise denied; and it is further

ORDERED that a **Preliminary Conference shall be held in Courtroom 335 at 60 Centre Street New York, NY 10007 on April 15, 2026 at 10:00am**. Failure to timely appear for the preliminary conference may result in sanctions, including but not limited to striking of pleadings or default judgment.



3/19/2026
DATE

KATHLEEN WATERMAN-MARSHALL, J.S.C.

CHECK ONE:		**CASE DISPOSED**			[X]	**NON-FINAL DISPOSITION**	
		GRANTED	[ ]	**DENIED**	[X]	**GRANTED IN PART**	[ ] **OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	[ ] **REFERENCE**