

Judson Realty LLC v Stair Sainty Matthiesen, Inc.

2007 NY Slip Op 31358(U)

May 16, 2007

Supreme Court, New York County

Docket Number: 0600415/2006

Judge: Judith J. Gische

Republished from New York State Unified Court
System's E-Courts Service.

Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JUDITH J. GISCHE
Justice

PART 10

Judson Realty LLC,

INDEX NO. 600415/06

- v -

MOTION DATE _____

Stair Saintry Mattheisen, Inc
et al.

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**motion (a) and cross-motion(s)
decided in accordance with
the annexed decision/order
of even date.**

FILED

MAY 29 2007

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 5/16/07

JUDITH J. GISCHE, J.S.C. J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

Supreme Court of the State of New York
County of New York: Part 10

Judson Realty LLC,

Plaintiff,

Decision/Order

-against-

Index#600415/06

Stair Sainty Matthiesen, Inc.
and Guy Sainty

Mot. Seq. #001

Defendants.

Pursuant to CPLR 2219(a) the court considered the following numbered papers on this motion:

PAPERS	NUMBERED
OSC, JTC affd., GS affd., exhibits.....	1
NJ affd., PF affirm., exhibits.....	2
MR affd.....	3
AC affd., LC affd., exhibits.....	4

FILED
SEP 22 2017
CLERK OF THE COURT
CLERK'S OFFICE

Gische, J.:

Upon the foregoing papers the decision and order of the court is as follows:

Defendants are a corporation and an individual. They jointly move to vacate a default judgment entered against them in the amount of \$30,434.17 on September 1, 2006. They claim that neither one of them was properly served with the underlying summons and complaint. Alternatively they claim that they both have an excusable default and meritorious defense. CPLR §5015. Plaintiff opposes the motion.

Service was made upon the corporate defendant by serving the Secretary of State in accordance with BCL § 306(b). Defendants only argument in this regard is that the Secretary of State did not have up to date information about the location of its offices and it improperly listed a former employee as the designated agent. It is,

however, the responsibility of the corporation to make sure that the information on file with the Secretary of State is up to date and correct. The failure of the corporation to provide up to date information does not invalidate a service made in accordance with the applicable provisions of law.

Service upon the individual defendant was also proper under CPLR §308 (2). Service was effectuated by serving a person of suitable age and discretion at defendants actual place of business located at 38 Dover Street, London, England. . The person served was Mira Dimitrova. Defendants claim that Ms. Dimitrova is affiliated with a gallery called Robilant & Voena, which although physically located in the building as defendant Sainty's gallery, is not his place of business. What defendants fail to disclose and do not factually refute when confronted with evidence, is that the two galleries occupy the exactly identical physical space. Thus even accepting defendants contention that they are different legal entities, service on Ms. Dimitrova qualifies as service upon a person of suitable age and discretion.

The court finds that the it has personal jurisdiction over both the corporate and individual defendant in this action.

The court also rejects defendants arguments that there is a sufficient showing to otherwise set aside the default judgment. Even were the court to find credible defendants claims that they simply did not know about the action, they have not otherwise shown a meritorious defense to the underlying action.

The underlying action seeks a brokers commission. Defendants do not deny that prior to July 2005, they were tenants under a lease for commercial space located at 22 East 80th Street in Manhattan ("demised premises"). They do not deny that at their

behest plaintiff located a subtenant that was ready willing and able to take over their obligations under the existing lease. They do not deny that the subtenant procured by plaintiff actually did take over defendants obligations under the lease and that plaintiff are owed some commission for the service provided. The subtenant has been in the demised premises since in or about July 2005.

Defendants purported defenses are that: they did not have an exclusive arrangement with plaintiff; that plaintiff did not provide background information about the subtenant and did not participate in the negotiations between them and the subtenant. These claims, even if true, are not legal defenses to the payment of a brokers commission.

A broker earns a commission when s/he procures a tenant ready, willing and able to close on the terms of a deal authorized by a landlord. AJ Clark Real Estate Copr. V. Meyers, 27 AD3d 230 (1st dept. 2006). It is undisputed that such conditions were fulfilled. There is no contract produced which alters this rule of law and/or conditions the commission on the broker providing "background information" or actually negotiating the terms of the deal. Whether the parties exclusive arrangement had run out or not is a red herring, because this plaintiff was the actual broker who had procured the subtenant. The fees sought were not based upon any agreement of exclusivity. Defendants have not shown that the parties had any arrangement about how to calculate the commission owed and/or the that amount sought is unreasonable for the services provided.

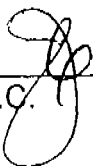
CONCLUSION

Accordingly, Defendants' motion to vacate the default judgment is denied in its

entirety. All stays regarding execution of the judgment are vacated. Any requested relief not otherwise expressly granted herein is denied. This constitutes the decision and order of the court.

Dated: New York, New York
May 16, 2007

SO ORDERED:

J.G. J.S.C. 

FILED
MAY 29 2007
NEW YORK
COUNTY CLERK'S OFFICE