

Matter of Mapama Corp. v New York City Loft Bd.
2007 NY Slip Op 33522(U)
October 19, 2007
Supreme Court, New York County
Docket Number: 0108168/2006
Judge: Lewis Bart Stone
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.

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

PRESENT: HON. LEWIS BART STONE

Justice

PART 505

Index Number : 108168/2006

MAPAMA

vs

LOFT BOARD

Sequence Number : 002

VACATE DEFAULT JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is *denied in*

accordance with the annexed Decision and Order

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

FILED

OCT 30 2007

NEW YORK COUNTY CLERK'S OFFICE

Dated: 19 Oct 07

Lewis Bart Stone

HON. LEWIS BART STONE

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 50S

-----X
 In the Matter of the Application of :
 MAPAMA, CORP., :
 :
 Petitioner, : DECISION AND
 : ORDER
 THE NEW YORK CITY LOFT BOARD, :
 : INDEX NUMBER
 Respondent, : 108168/06

FILED
 OCT 30 2007
 NEW YORK
 COUNTY CLERK'S OFFICE

Hon. Lewis Bart Stone, J

By Notice of Motion, dated July 9, 2007, Respondent, New York City Loft Board (the "Board") moved to vacate a Default Judgment entered against the Board in favor of Petitioner, Mapama Corp., ("Mapama") on August 30, 2006, for the Board's failure to respond to Mapama's Petition dated June 12, 2006 which sought, pursuant to Civil Practice Law and Rules ("CPLR") Article 78, to annul a determination of the Board dated February 15, 2006, which set aside a finding of an Administrative Law Judge ("ALJ") of the New York City Office of Administrative Trials and Hearings, dated August 26, 2005. Following the Board's default, this Court granted Mapama's motion to annul the determination and directed Mapama to settle an order on notice to the Board.

Both parties submitted proposed orders. The proposed order submitted by the Board dated August 17, 2006 provided for a vacation of the default and the Co-op Board

restoration of the Petition to the active calendar of this Court so that the Board could respond and oppose Mapama's petition on its merits. This proposed order was accompanied by an affirmation of an Assistant Corporation Counsel acting as counsel to the Board in support of its request for an order vacating the default. After considering the issues, the Court adopted Mapama's proposed order and not the Board proposed order. The order (the "Order") was filed with the County Clerk of New York County on September 20, 2006 and notice of entry thereof was served on the Board on September 29, 2006.

No appeal has been taken from the decision of this Court on the entry of the default order.

The Order extended the time for Mapama to obtain an alteration permit until May 1, 2007, which this Court observes is a date that precedes the Board's Notice of Motion to Vacate the Default Judgment.

CPLR §5015 provides:

"The court which rendered a judgment or order may relieve a party from it upon such terms as may be just, on motion of any interested person with such notice as the court may direct, upon the ground of:

1. Excusable default, if such motion is made within one year after service of a copy of the judgment or order with written notice of its entry upon the moving party, or, if the moving party has entered the judgment or order,

within one year after such entry.

As the judgment was entered in September 2006, this motion is timely. Accordingly, this Court must address the standard to be applied in determining whether to reopen the default, and to the extent it does, fix the conditions required by the status which conditions relief “on such terms as may be just.” Under the singular circumstances of this proceeding, both of these inquiries are interrelated.

The Board was established under the New York City Loft Law which was enacted to regularize tenancies in so-called loft buildings.

Unlike most regulation of housing, where owners may not move tenants into a “non compliant” building, the Loft Law recognizes that many residential tenants who, through their own desires and the voluntary agreement of their landlords, took residence in older former commercial and industrial buildings not originally designed or zoned for residential use. The city’s solution to this market driven state of facts was legislation to require such buildings and apartments to be brought into code compliance, to regulate their rents, and to provide for certain costs of code compliance to be passed through to the tenants, with the Loft Board empowered to set and enforce rules for such transition. Under the New York Multiple Dwelling Law (“MDL”) §284(2), an owner of such a building is required to take “all reasonable and necessary action to obtain an approved alteration permit by March 1, 2004 and

the Loft Board is empowered to seek extension if the owner can establish” the necessity for the extension arising from conditions or circumstances beyond owner’s control and the owner has made a good faith effort to meet the code ordinance timetable requirements.

Mapama owns a loft building in Manhattan which it has been engaged in legalizing as a residential loft building for over 25 years, during which time the building has been home to a number of tenants, a fact which itself illustrates the surreal nature of the City’s laws relating to loft living.

Because the process includes input from the illegal tenants themselves, whose financial interest is to delay rent increases to pay for the costs of code compliance, the process is tortuous. The process may be further complicated when approvals of other city agencies, such as the city zoning authorities or the Landmark Commission are needed to effectuate compliance. Here, Mapama’s process of code compliance began with its filing of applications with the Building Department for an alteration permit on June 13, 1983, an application to the City Planning Commission (“CPC”) on June 27, 1983 and an initial the filing with the Loft Board that year. For some delay was occasioned by reason of the owner’s bankruptcy where Federal stays applied. An initial ruling by CPC was rendered in October 4, 1988 (5 years later), which imposed yet another requirement, that a special Permit be obtained under the

Zoning Resolutions, prior to that construction. This process continued, with many agencies slowly processing applications and the tenants precipitating various delays of meeting, processing and disagreeing to details of the process.

Because the tenants and Mapama could not agree as to the work to be performed, the matter was been submitted to a trial before the ALJ in mid 2004. The ALJ issued a decision granting Mapama a reasonable time to make the required changes after the Loft Board made its final decision as to what was required. The Loft Board its decision of October 2005, reversed the ALJ's grant for additional time for Mapama to comply.

The default by the Board to answer Mapama's original petition and its failure to make this motion to vacate until almost eleven months after this Court's Order was issued is systematic of a broken procedure by which the Board cannot seem to resolve issues before it in any timely manner. This dispute has been pending longer than the fictional lawsuit lampooned by Charles Dickens in Bleak House as the negative paradigm of governmental delay.¹ This Court need not address whether the cause of the delay is a law impossible to apply, a bias to delay support of tenants who don't want rent increases or merely bureaucratic inertia.

¹ Jarndyce v. Jarndyce, in Chancery.

What is further problematic here is that the Order of the Court of August 30, 2006 extended Mapama's time to obtain its permits to May 1, 2007, a date more than two months prior to the date of the Board's motion to reargue. Thus, the Board's delay in seeking a reopening would unjustly penalize Mapama for relying on the extension granted by the ALJ and supported by this Court to enable it to pursue work to bring its building into legal compliance, the very purpose of the Loft law. As any grant of relief under CPLR §5015 requires the Court to set terms as may be just, this Court finds the Board's delay in filing this motion to reconsider until after the extension time expired to be problematical and that no just condition could be imposed so as to permit such a reopening.

The basic underlying position of the Board is that Mapama was not entitled to any delay to enable it to perform work, the nature of which the Board had not gotten around to determining. Another masterpiece of literature, Catch 22, is an apt metaphor for their position.

The motion is denied.

This is the Decision and Order of the Court.

DATED: OCTOBER 19, 2007
NEW YORK, NEW YORK



Hon. Lewis Bart Stone
Justice of the Supreme Court

FILED
OCT 30 2007
NEW YORK
COUNTY CLERK'S OFFICE