

**Glass v Gold**

2007 NY Slip Op 33806(U)

November 20, 2007

Supreme Court, Suffolk County

Docket Number: 0028898/2003

Judge: Elizabeth H. Emerson

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SUPREME COURT - STATE OF NEW YORK  
**TRIAL TERM, PART 8 SUFFOLK COUNTY**

PRESENT: Hon. Elizabeth Hazlitt Emerson

MOTION DATE: 2-28-07  
SUBMITTED: 3-14-07  
MOTION NO: 017-MD

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SAMUEL I. GLASS, As Trustee on behalf of ROBERT  
COHEN and WILLIAM FARRELL,

Plaintiff,

DANIEL GOLD and MARIANNE GOLD  
Defendants Pro Se  
229 Nassau Road  
Huntington, New York 11743

-against-

MARIANNE GOLD, AS ADMINISTRATRIX OF THE  
ESTATE OF HARVEY N. GOLD, A/K/A NUMAN  
GOLD, MARIANNE GOLD AS HEIR TO THE ESTATE  
OF HARVEY N. GOLD, A/K/A NUMAN GOLD, DAN R.  
GOLD, AS HEIR TO THE ESTATE OF HARVEY N.  
GOLD, A/K/A NUMAN GOLD, LAWRENCE DANIEL  
GOLD, AS HEIR TO THE ESTATE OF HARVEY N.  
GOLD, A/K/A NUMAN GOLD, ROBIN A. GOLD, A/K/A  
ROBIN A. CAMERON, AS HEIR TO THE ESTATE OF  
HARVEY N. GOLD, A/K/A NUMAN GOLD, NEW  
YORK STATE DEPARTMENT OF TAXATION AND  
FINANCE, UNITED STATES OF AMERICA,  
HOWARD'S EXPRESS, INC., HUNTINGTON  
HOSPITAL, G.E. CAPITAL CORP., NYS  
COMMISSIONER OF MOTOR VEHICLES, SUFFOLK  
CO. DEPT OF SOCIAL SERVICES,

Defendants.

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Upon the following papers numbered 1 to 10 read on this motion to vacate order ; Order to Show Cause and supporting papers 1-5 ; Notice of Cross Motion and supporting papers    ; Answering Affidavits and supporting papers 6-8 ; Replying Affidavits and supporting papers 9-10 ; it is,

**ORDERED** that this motion by the defendants Daniel Gold and Marianne Gold for an order vacating an order of this court dated January 9, 2007, which directed that possession of the premises that is the subject of this mortgage foreclosure action be delivered to Allstate Properties, LLC, & Millennium Home & Land, LTD, is denied; and it is further

**ORDERED** that the Sheriff of the County of Suffolk is directed to remove the defendants Daniel Gold and Marianne Gold and any other occupants from the foreclosed premises and to put the purchasers into possession thereof no sooner than January 1, 2008, unless the parties

reach their own agreement prior to the enforcement of this order.

The moving defendants did not oppose the motion by Allstate Properties, LLC, & Millennium Home & Land, LTD, the purchasers of the foreclosed premises, for an order directing the Sheriff of the County of Suffolk to put them into possession thereof. A party seeking to vacate an order entered upon his default in opposing a motion must demonstrate a reasonable excuse for the default and a meritorious defense to the motion (*see*, **Matter of Phillips v Goord**, 16 AD3d 422). While the incapacity of the moving defendants' attorney may be considered a reasonable excuse for their default, the moving defendants have failed to demonstrate a meritorious defense to the motion. Their argument that the deed was not exhibited to them in accordance with RPAPL 713(5) is improperly raised for the first time in their reply papers. The court, therefore, declines to consider it (*see*, **Klimis v Lopez**, 290 AD2d 538; **Feratovic v Lun Wah, Inc.**, 284 AD2d 368, 369; **Voytek Tech. v Rapid Access Consulting**, 279 AD2d 470, 471; **Watt v Irish**, 184 Misc 2d 413, 416-417). Accordingly, the motion is denied.

HON. ELIZABETH HAZLITT EMERSON

DATED: November 20, 2007

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J. S.C.