

Lassalle v Pleasant, LLC
2008 NY Slip Op 30313(U)
February 4, 2008
Supreme Court, New York County
Docket Number: 0114681/2006
Judge: Barbara Kapnick
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: KAPNICK
Justice

PART 12

LESSALLE, ANDRE

INDEX NO. 114681/06

- v -

PLEASANT, L.L.C.

MOTION DATE _____

MOTION SEQ. NO. 02

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 ...
Answering Affidavits — Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE WITH
ACCOMPANYING MEMORANDUM DECISION**

FILED
FEB 05 2008
NEW YORK
COUNTY CLERK'S OFFICE

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

Dated: 2/4/08

BARBARA R. KAPNICK 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 12

-----X
ANDRE LASSALLE,

Plaintiff,

-against-

PLEASANT, LLC,

Defendant.
-----X

BARBARA R. KAPNICK, J.:

DECISION/ORDER
Index No. 114681/06
Motion Seq. No. 002

FILED
FEB 05 2008
NEW YORK
COUNTY CLERK'S OFFICE

In this action, plaintiff Andre Lassalle seeks to recover damages for personal injuries he allegedly sustained when he slipped and fell on a slippery condition at a party held at 160 Buckskill Road in East Hampton. The property was owned by defendant Pleasant, LLC and leased to Brian Morrison.

By Decision/Order dated August 24, 2007, this Court granted on default plaintiff's motion for a default judgment against the defendant on the ground that it had failed to timely serve an Answer and/or appear in this action, and directed an inquest and assessment of damages.

Defendant now moves by Order to Show Cause for an order pursuant to CPLR §§ 317 or 5015 vacating and setting aside the default on the grounds that: (i) it did not receive actual notice of the action in time to defend, since defendant inadvertently

[* 3]

failed to notify the Secretary of State of a change of address; and
(ii) it has a reasonable excuse for its default.

In addition, defendant argues that it has a meritorious defense; namely, defendant contends that there was no apparent defect in the area of the accident, the grass on which plaintiff slipped was wet as a result of rain earlier in the day, and neither defendant nor the tenant had actual or constructive notice of a defective condition.

Plaintiff argues in opposition that the defendant's default should not be vacated because defendant did, in fact, receive actual notice of the lawsuit; i.e., letters dated March 20, 2007 were sent to the defendant and its attorneys advising it that a lawsuit had been commenced and that plaintiff would be seeking a default judgment if counsel did not receive a response within 30 days.

Defendant acknowledges receiving a copy of the letter sent to its attorney and forwarding it to its insurance company. However, the insurer failed to file an Answer and ultimately disclaimed coverage.

[* 4]

Based on the papers submitted and the oral argument held on the record on December 5, 2007, this Court finds that defendant has set forth a reasonable excuse for its default and a meritorious defense.


Accordingly, consistent with the Court's "strong preference for resolving cases on their merits" (see, Rugieri v. Bannister, 22 A.D.3d 299, 302 [1st Dep't 2005]), defendant's motion to vacate the default judgment is granted.

Defendant shall serve an Answer to plaintiff's Complaint within 20 days of entry of this order.

A preliminary conference shall be held in IA Part 12, 60 Centre Street, Room 341 on March 19, 2008 at 9:30 a.m.

This constitutes the decision and order of this Court.

Dated: February 4, 2008



Barbara R. Kapnick
J.S.C.

BARBARA R. KAPNICK
J.S.C.

FILED

FEB 05 2008

NEW YORK
CLERK'S OFFICE