SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

TRIAL/IAS, PART 4
NASSAU COUNTY

MURRAY WALTER BLATT, a/k/a MARTIN BLATT, individually and on behalf of the joint venture/partnership consisting of MARTIN BLATT and HERTZL MOEZINIA,

Plaintiffs,

-against-

ALEXANDER ASHKENAZI,

Defendant.

INDEX No. 9556/07

MOTION DATE: Jan. 7, 2008
Motion Sequence # 003

The following papers read on this motion:

Order to Show Cause..... X
Affirmation in Support..... X
Affirmation in Opposition..... X
Memorandum of Law..... X

This motion, by plaintiff Moezinia, brought on by an order to show cause, for an order:

(a) vacating and setting aside the default judgment against defendant Alexander Ashkenazi entered November 7, 2007, and

(b) for such other and further relief that this Court deems just and proper,

is determined as hereinafter set forth.

FACTS

This action arises from the brokerage and sale of certain real property in Flushing, New York, known as the Flushing Promenade (the "Promenade"). Prior to the sale of the property, Blatt referred Moezinia to a bank which held the defaulted note for the Promenade, for which service Moezinia claims to have paid Blatt $160,000.00 as a finder's fee. On February 16, 2006, Moezinia and Ashkenazi entered into a brokerage agreement where Moezinia would receive $1,500,000.00 upon closing of the sale of the Promenade to Ashkenazi. Later, on or about June 29, 2006, the Promenade was sold to ABS Flushing Development, LLC ("ABS"). In June of 2007, Blatt commenced an action in Supreme Court, Nassau County against Ashkenazi for payment of the obligation to the alleged partnership. In August of the same year, Moezinia commenced a separate action against Ashkenazi in Supreme Court, Kings County. A Default judgment was entered in Supreme Court, Nassau County against Ashkenazi on behalf of Blatt on November 7, 2007. Six days later, on November 13, 2007, Moezinia served a motion to Intervene/Consolidate. On December 18, 2007, Moezinia made the instant application.

MOVANT'S CONTENTIONS

The movant argues that he is an interested person, and as such, has standing to make the instant motion. Furthermore, being one of the captioned plaintiffs, the movant argues that he is an indispensible party to the action, and that the action should not have been commenced without his consent and participation. The movant states that he never consented to being brought into this action as a plaintiff, either as an individual or as a member of a partnership/joint venture which he claims does not exist.

PLAINTIFF BLATT'S CONTENTIONS

In opposing the motion, Blatt asserts that the default judgment should not be vacated, because Moezinia lacks standing to make this motion. Blatt claims that Moezinia is not aggrieved by the default judgment, but would instead benefit by having Blatt secure Ashkenazi's assets.

Blatt further argues that, even should Moezinia have standing, he fails to set forth a

valid basis for vacating the default judgment. Moezinia's grounds for requesting vacatur of the default judgment do not fall within any of the grounds enumerated in CPLR § 5015(a).

Finally, Blatt argues that Moezinia should be required to post an undertaking to safeguard Blatt's individual interest in the default judgment.

DECISION

"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." C.P.L.R. sec. 5015 (a). The movant, Moezinia, is an interested person, and as such has standing to move for vacatur of the default judgment. If the fact that Moezinia is a party to the writing which forms the basis for Blatt's action against the defendant is not enough, it is noted that Blatt's counsel specifically admits that "Moezinia may technically be an interested party." (Plaintiff's Memorandum, p. 2). The Appellate Division, Second Department has addressed the issue of who may claim to be an interested person, noting that, to have standing to seek relief from an order, "all that is necessary is that some legitimate interest of the moving party will be served and that judicial assistance will avoid injustice." (**Lane v. Lane**, 175 A.D.2d 103, 105, 572 N.Y.S.2d 14, 2nd Dept., 1991).

The movant is not precluded from moving to vacate the default judgment merely because his reasons do not fall within the grounds enumerated by C.P.L.R. sec. 5015 (a)(1-5). It is well settled that those grounds are not exhaustive. "CPLR 5015 expressly preserves the power of the court to relieve parties from a judgment, ...[h]owever, that rule does not exhaust the court's power to relieve the parties." (**McMahon v. City of New York**, 105 A.D.2d 101, 483 N.Y.S.2d 228, 1st Dept., 1984). In fact, "the whole power of the court to relieve from judgments ...is not limited by [the statute]; but in its exercise of control over its judgments it may open them upon the application of anyone for sufficient reason, in the furtherance of justice. Its power to do so does not depend upon any statute, but is inherent, and it would be quite unfortunate if it did not possess it to the fullest extent." (**Ladd v. Stevenson**, 112 N.Y. 325, 19 N.E. 842, 1889; **see also Pauk v. Pauk**, 277 A.D.2d 296, 297, 716 N.Y.S.2d 876, 2nd Dept., 2000). The Court' s "inherent power to exercise control over its judgments is not plenary, and should be resorted to only to relieve a party from judgments taken through fraud, mistake, inadvertence, surprise, or excusable neglect." (**McKenna v. County of Nassau**, 61 N.Y.2d 739, 742, 472 N.Y.S.2d 913, 914, 1984). In the case at bar, the movant is a party to the action, who may not have been privy to any of the steps taken to secure the default judgment – indeed, it appears that he was not even notified of the action prior to the default.

Furthermore, the only documentary evidence of the agreement upon which the default judgment is predicated is the agreement between the defendant (Ashkenazi) and the movant (Moezinia). Given these facts, the movant has both standing and grounds to request that the default judgment entered against Ashkenazi be vacated.

No undertaking is required of the movant. The sole basis of Blatt's alleged interest is the purported oral partnership between himself and Moezina, which existence Moezinia denies. The default judgment at issue does not represent any liability of Moezinia to Blatt, and Blatt has not cited any theory of law that requires Moezinia to post an undertaking under these circumstances. Inasmuch as the Court has broad discretion to determine whether an undertaking is required under the circumstances (See **Harp v. Tednick**, 256 A.D.2d 904, 905, 681 N.Y.S.2d 849, 1998), such is not warranted herein.

Plaintiff Moezinia's motion to vacate the default judgment entered November 7, 2007, is **granted**, without the requirement of an undertaking.

Dated FEB 06 2008

Stephen A. Bucaria
J.S.C.