

<b>Central Funding Co. v Prestige Realty Corp.</b>
2011 NY Slip Op 33978(U)
August 29, 2011
Supreme Court, Bronx County
Docket Number: 380261/10
Judge: Jr., Kenneth L. Thompson
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9-1-11

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX IA 20

Central Funding Company, Columbia Capital Co., and  
Robert H. Fuller,

Index No. 380261/10

BRONX

Plaintiffs,

SEP 01 2011

-against-

Prestige Realty Corp., 4761 White Plains Road Corp. aka  
4761 White Plain Road Corp., S.A.K.B. Realty  
Corporation, 1299 Jerome Avenue Inc., Janet  
Bhoopsingh, ELG Restoration & Redemption  
Corporation, New York City Department of Finance, New  
York City Environmental Control Board, New York City  
Department of Housing Preservation & Development,  
John Doe #1 through John Doe #50, et al.,

DECISION/ORDER

Present:  
HON. KENNETH L. THOMPSON, Jr.

Defendant.

The following papers numbered 1 to \_\_\_ read on this motion, \_\_\_\_\_

No	On Calendar of	PAPERS NUMBERED
Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed-----		1a, 1b, 1c _____
Answering Affidavit and Exhibits-----		2 _____
Replying Affidavit and Exhibits-----		3 _____
Affidavit-----		_____
Pleadings -- Exhibit-----		_____
Stipulation -- Referee's Report --Minutes-----		_____
Filed papers-----		_____

Upon the foregoing papers and due deliberation thereof, the Decision/Order on this motion is as follows:

Plaintiff motion for an Order pursuant to CPLR § 2221(d) to reargue this Court's  
March 17, 2011, denying its request for a default judgment against Defendants Prestige  
Realty Corp., 4761 White Plains Road Corp. aka 4761 White Plain Road Corp.,  
S.A.K.B. Realty Corporation, 1299 Jerome Avenue Inc. and Janet Bhoopsingh for failing  
to timely interpose an Answer is **granted**.

Plaintiffs' motion for an Order pursuant to CPLR § 3215 granting a default  
judgment against Defendants Prestige Realty Corp., 4761 White Plains Road Corp. aka  
4761 White Plain Road Corp., S.A.K.B. Realty Corporation, 1299 Jerome Avenue Inc.  
and Janet Bhoopsingh for failing to Answer the Complaint is **granted**.

Plaintiffs' motion for an Order pursuant to CPLR § 3215 granting a default judgment against Defendants ELG Restoration & Redemption Corporation and New York City Department of Housing Preservation & Development for failing to Answer the Complaint is **granted**.

Plaintiffs' motion for an Order pursuant to CPLR § 3215 granting a default judgment against Defendants New York City Environmental Control Board and New York City Department of Finance for failing to either appear or Answer the Complaint is **granted**.

"A motion for leave to reargue . . . shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion." CPLR § 2221(d)(2).

A motion for reargument, addressed to the discretion of a court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law. Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided.

Foley v. Roche, 68 A.D.2d 558, 567, lv appeal denied, 56 N.Y.2d 507.

The Court's prior application failed to appreciate that CPLR § 3215(a) provides for a default judgment for failing to plead, which is distinct from a failure to appear. See Siegel, N.Y. Practice § 293, at 493 (5<sup>th</sup> ed.) Thus, regardless of whether Defendants appeared in this matter, they are still subject to a default judgment for failing to timely interpose an Answer.

Plaintiff has submitted evidence that the Summons and Verified Complaint was served on Defendant: Prestige Realty Corp. via the Secretary of State on February 19,

2010, pursuant to NY Bus. Corp. Law § 306; 4761 White Plains Road Corp. aka 4761 White Plain Road Corp. via the Secretary of State on February 16, 2010, pursuant to NY Bus. Corp. Law § 306; S.A.K.B. Realty Corporation via the Secretary of State on February 16, 2010, pursuant to NY Bus. Corp. Law § 306; 1299 Jerome Avenue Inc. via the Secretary of State on February 16, 2010, pursuant to NY Bus. Corp. Law § 306; and Janet Bhoopsingh via personal service upon a person of suitable age and discretion at Defendant's residence and by mail on or about April 7, 2010. There is no evidence in the record, however, that these Defendants ever served an Answer in response to the Summons and Verified Complaint.

Plaintiff has also submitted proof that the Summons and Verified Complaint were served upon Defendant: ELG Restoration & Redemption Corporation via the Secretary of State on February 16, 2010; and New York City Department of Housing Preservation & Development via its Agent Authorized to Accept service on February 17, 2010. There is no evidence in the record that these Defendants ever served an Answer.

Plaintiff has also submitted proof that the Summons and Verified Complaint were served upon Defendant: New York City Environmental Control Board via its Agent Authorized to Accept service on February 19, 2010; and New York City Department of Finance via its Agent Authorized to Accept service on February 19, 2010. There is also no evidence in the record that any of these Defendants served an Answer.

Although counsel for Defendants Prestige Realty Corp., 4761 White Plains Road Corp. aka 4761 White Plain Road Corp., S.A.K.B. Realty Corporation, 1299 Jerome Avenue Inc. and Janet Bhoopsingh appeared on April 27, 2010, there is no evidence that an Answer was ever served. Despite counsel's claims that she "filed" an Answer in

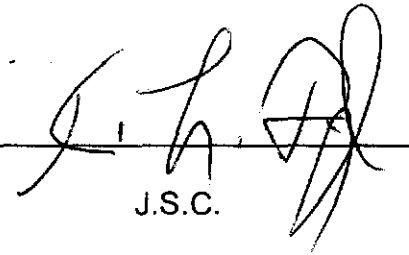
this action, there is no evidence that she ever served the pleading or made a motion to compel Plaintiff to accept it.

The Court finds that Defendants' counsel's excuse for failing to timely serve an Answer, that "[h]ad there been no settlement offers the answer would have been sent out right away," is insufficient to warrant denying Plaintiff's application. See United Ind. Corp. v. Shreiber, 51 A.D.2d 688, 689 (finding that "[a]ppellants' belief that the matter would be settled did not excuse their default").

Defendants have also failed to provide an affidavit of a person with knowledge of either the facts of their defense or the sufficiency of the service upon them, thus, they have failed to properly state a meritorious defense to the action or to challenge service. The Affirmation in Opposition of Defendants' counsel neither asserted the basis of her knowledge nor provided anything more than speculation that Plaintiff is not "in possession of the notes that are the part of this complaint." See Peacock v. Kalikow, 239 A.D.2d 188, 190 (holding that "[i]n order to demonstrate a meritorious defense, a party must submit an affidavit from an individual with knowledge of the facts"); see also Fulton County Nat'l Bank & Trust Co. v. Fulton Automotive Corp., 114 A.D.2d 706, 707 (finding "no evidence in the record supportive of defendants' claim that service pursuant to Bus. Corp. § 306 was improper").

The foregoing shall constitute the decision and order of this Court.

Dated:           29 2011          

  
\_\_\_\_\_  
J.S.C.

**KENNETH L. THOMPSON, J.S.C.**