

Whitney Lane Holdings, LLC v Don Realty, LLC

2014 NY Slip Op 33555(U)

May 5, 2014

Supreme Court, Saratoga County

Docket Number: 20062874

Judge: Stephen A. Ferradino

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
SUPREME COURT

COUNTY OF SARATOGA

WHITNEY LANE HOLDINGS, LLC,

Plaintiff,

-against-

DECISION and ORDER

RJI #45-1-2006-1581

Index # 20062874

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FILED

DON REALTY, LLC, DONOVAN and ARRIANNA
LITTLEFIELD (a/k/a ADRIANNA LITTLEFIELD)
by their guardian, MATTHEW J. SGAMBETTERA, ESQ.,
and DDA & A REALTY, LLC,

Defendants.

APPEARANCES:

Kim I. McHale & Associates, P.C.
Attorneys for the Plaintiff
225 Broadway, Suite 1000
New York, New York 10007

Hacker Murphy, LLP
Attorneys for the Defendants
7 Airport Park Boulevard
Latham, New York 12110

STEPHEN A. FERRADINO, J.

The defendants have moved, pursuant to Civil Practice Law and Rules (CPLR) §§2001, 2005, 2221 and 5015(a), for an order vacating this court's September 23, 2013 order. The plaintiff has opposed the motion.

This matter arises out of a commercial real estate transaction. On or about June 13, 2013, the plaintiff moved this court for an order precluding the defendants from offering evidence and striking the defendants' answer for failure to obey previous court orders to provide discovery.

On June 19, 2013, the parties appeared for a conference before this court. At that conference, counsel for the plaintiff indicated that a motion to compel discovery had been filed. According to Matthew J. Sgambettera, Esq. (Attorney Sgambettera), he explained that he did not understand why such a motion had been filed as the defendants had already responded to the plaintiff's discovery requests, more than five years earlier. Counsel for the plaintiff indicated that he was not aware that said responses had been provided and that he would contact plaintiff's former counsel in order to obtain said responses. Attorney Sgambettera then reminded opposing counsel that the plaintiff had yet to respond to the defendants' discovery demands.

The conference and the pending motion were adjourned to September 23, 2013, in order to give the parties an opportunity to resolve all outstanding discovery issues. On June 21, 2013, this court sent a letter to the parties advising that a conference was scheduled for September 23, 2013. The letter that was sent to Attorney Sgambettera was returned to the court as undeliverable.

Neither Attorney Sgambettera, nor anyone else representing the defendants, appeared at the scheduled conference. Given the defendants' failure to appear, as well as the defendants' alleged failure to comply with the plaintiff's discovery demands, this court signed an order that, among other things, struck the defendants' answer and precluded the defendants from offering evidence.

The defendants have moved to vacate this court's September 23, 2013 order. The requirements for vacating an order pursuant to CPLR §5015(a)(1) are well settled. The party seeking to vacate the order must establish the existence of a reasonable excuse for their default, as well as a meritorious cause of action or defense. In addition, the defaulting

party must establish that the default was not a result of willfulness and that vacating the default will not result in prejudice to the party who obtained the default. *Dodge v Commander*, 18 AD3d 943, 945 [3d Dept 2005]; *Aaron v Carter, Conboy, Case, Blackmore, Napierski & Maloney, P.C.*, 12 AD3d 753, 754 [3d Dept 2004]; *Winney v County of Saratoga*, 252 AD2d 882, 884 [3d Dept 1998].

The proof required to prevail on a motion to vacate a default judgment is not as great as the proof required to successfully oppose a motion for summary judgment. *Dodge v Commander*, 18 AD3d at 945; *Clark v MGM Textiles Indus.*, 307 AD2d 520, 521 [2003]; *Winney v County of Saratoga*, 252 AD2d at 884.

The court's decision on a motion to vacate, pursuant to CPLR § 5015(a)(1), will only be disturbed in the event of an abuse of discretion. *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 68 [2003]; *Aaron v Carter, Conboy, Case, Blackmore, Napierski & Maloney, P.C.*, 12 AD3d at 754-755.

The defendants argue that they had a reasonable excuse for their default, as well as a meritorious defense. Specifically, Attorney Sgambettera argues that he believed the motion to preclude was withdrawn. Attorney Sgambettera submits that plaintiff's counsel advised that the motion to preclude would be withdrawn since the defendants had already provided the requested discovery responses.

Attorney Sgambettera contends that the court set a control date of September 23, 2013, to ensure that both parties had fully complied with all outstanding discovery demands. Attorney Sgambettera also contends that he was never served with, nor did he receive a copy of, the plaintiff's motion to preclude. Further, Attorney Sgambettera states that he never received notice from the plaintiff's counsel that a proposed order was being

submitted for the court's consideration and signature.

The defendants have established a reasonable excuse for their default. It is noted that the proposed order was submitted by plaintiff's counsel, and signed by the court, at the September 23, 2013 conference, after the defendants' default. The court notes, however, that while the September 2013 conference date was discussed at the June 19, 2013 conference, the written confirmation of the new conference date does not appear to have been received by Attorney Sgambettera. The court's June 21, 2013 letter, scheduling the September 23, 2013 conference, was sent to Attorney Sgambettera and later returned to the court as undeliverable.

The defendants have also established a meritorious defense. As noted previously, the defendants contend that they had already complied with the defendants' discovery demands, more than five years earlier. According to the defendants, the discovery sought by plaintiff's current counsel is substantially the same as the discovery sought by the plaintiff's former counsel. The defendants have produced subpoenaed records which demonstrate that ten (10) boxes of files were transferred from the plaintiff's former counsel to the plaintiff's current counsel. The defendants contend that, under the circumstances, it was believed that they had complied with the court's directives and all discovery demands.

The record does not establish that the defendants' default was the result of wilfulness. While the length of time this case has been pending may prejudice the plaintiff, there has been no showing of prejudice to the plaintiff caused by the defendants' September 23, 2013 default.

Based upon the foregoing, and in the interests of justice, the defendants' motion to vacate this court's September 23, 2013 order, is granted. A conference is scheduled for

June 10, 2014 at 9:30 a.m., at the Saratoga County Courthouse, Ballston Spa, New York. The parties are to be prepared to discuss the specific discovery demands that remain outstanding.

Any relief not specifically granted herein is denied. This decision shall constitute the order of the Court. No costs are awarded to any party. The original decision and order shall be forwarded to the attorney for the defendants for filing and entry. The underlying papers will be filed by the court.

Dated: May 5, 2014
Malta, New York

[Signature]
STEPHEN A. FERRADINO, J.S.C.
ENTERED
Craig A. Hayner
[Signature]
Saratoga County Clerk
SARATOGA COUNTY CLERK'S OFFICE
BALLSTON SPA, N.Y.
2014 MAY 16 PM 1:27

ENTERED

Papers Received and Considered:

Order to Show Cause, dated November 22, 2013

Affidavit of John F. Harwick, Esq. in Support of Defendants' Motion to Vacate the Preclusion Order Dated September 23, 2013, sworn to November 22, 2013, with Attached Exhibits A-B

Affidavit of Matthew J. Sgambettera, Esq. in Support of Defendants' Motion to Vacate the Preclusion Order Dated September 23, 2013, sworn to November 22, 2013, with Attached Exhibits A-F

Affirmation in Opposition, of Kim I. McHale, Esq., affirmed January 3, 2014, with Attached Exhibit A

Affirmation of John Naccarato, Esq., affirmed January 2, 2014

Affirmation in Further Opposition to the Order to Show Cause, of Kim I. McHale, Esq., affirmed February 24, 2014, with Attached Exhibits B-M

Attorney's Affirmation in Further Support of Motion to Vacate Prior Order, of John F. Harwick, Esq., affirmed March 3, 2014, with Attached Exhibit A

Supplemental Affidavit of Matthew J. Sgambettera in Support of Defendants' Motion to Vacate the Preclusion Order Dated September 23, 2013, with Attached Exhibit A