

Cruz v Lincoln Sq. Condominium
2014 NY Slip Op 33989(U)
March 21, 2014
Supreme Court, New York County
Docket Number: 113191/2011
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: DEBRA A. JAMES
Justice

PART 59

IVELISSE G. CRUZ,

Plaintiff,

- v -

Index No.: 113191/2011

Motion Date: 03/11/2014

Motion Seq. No.: 003

Motion Cal. No.: _____

THE LINCOLN SQUARE CONDOMINIUM, RESIDENTIAL BOARD of the LINCOLN SQUARE CONDOMINIUM, THE RESIDENTIAL BOARD of MANAGERS of the LINCOLN SQUARE CONDOMINIUM, LINCOLN SQUARE COMMERCIAL HOLDING CO LLC, LINCOLN METROCENTER PARTNERS LP, MILLENNIUM PARTNERS MANAGEMENT I, INC, COOPER SQUARE REALTY, INC, COOPER SQUARE REALTY SERVICES, LLC, WALKWAY GRINDING CO, COMMERCIAL BOARD of the LINCOLN SQUARE CONDOMINIUM, BOARD OF MANAGERS of the COMMERCIAL BOARD of the LINCOLN SQUARE CONDOMINIUM, CONDOMINIUM BOARD of the LINCOLN SQUARE CONDOMINIUM, LOW and MID RISE BOARD of the LINCOLN SQUARE CONDOMINIUM, HIGH RISE BOARD of the LINCOLN SQUARE CONDOMINIUM, and PRO CONCRETE CONTRACTORS CORP,

Defendants.

FILED

MAR 26 2014

COUNTY CLERK'S OFFICE
NEW YORK

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

The following papers, numbered 1 to 3 were read on this motion to vacate default judgment

Notice of Motion/Order to Show Cause -Affidavits -Exhibits _____
Notice of Cross/Motion-Answering Affidavits - Exhibits _____
Replying Affidavits - Exhibits _____

PAPERS NUMBERED	
1	_____
2	_____
3	_____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that the motion of plaintiff to enter a default judgment against defendants-Commercial Board of the Lincoln Center

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

Condominium and Board of Managers of the Commercial Board of the Lincoln Square Condominium and directing a hearing on assessment of damages defendants Commercial Board of the Lincoln Center Condominium and Board of Managers of the Commercial Board of the Lincoln Square Condominium shall be denied and the cross motion of such defendants to extent of compelling plaintiff to accept the verified answer in the form annexed to the cross motion shall be granted, but shall otherwise be denied.

In her papers on the motion plaintiff argued that this court is bound by the opinion in Ennis v Lema, 205 AD2d 632 (2d Dept 2003), which holds that "an excuse that the delay in appearing or answering was caused by the defendant's insurance carrier is insufficient." The court concurs with defense counsel that the First Department's opinion in Ganvey Merchandising Corp v Knudsen Elevator Corp, 169 AD2d 518 (1st Dept 1991) controls. In Ganvey, the First Department unanimously affirmed the trial court's denial of plaintiff's motion for a default judgment and granted defendant's motion for an extension of time, holding that "defendant's claim of inadvertent error on the part of its insurance agents...provide(s) a reasonable excuse for its delay in answering." As the facts of Ganvey are sufficiently analogous to those at bar, this court accepts as reasonable the excuse posited by the two moving defendants that their counsel did not answer the supplemental complaint until plaintiff served the

instant motion due to the carrier and defense counsel's protracted efforts to resolve complex insurance coverage issues involving the nearly two dozen entities served in this action. The court also concurs with the moving defendants that they have a meritorious defense. On the other hand, the court agrees with plaintiff that her claim against moving defendants is meritorious, and is not "utterly refuted" by the documentary evidence submitted by moving defendants pursuant to CPLR 3211(a)(1).

Accordingly it is

ORDERED that the motion pursuant to CPLR § 3215 of plaintiff for a default against defendants Commercial Board of the Lincoln Center Condominium and Board of Managers of the Commercial Board of the Lincoln Square Condominium is denied; and it is further

ORDERED that the cross motion of defendants for an extension of time to serve an answer is granted and the amended answer in the form appended as Exhibit C to the supporting affirmation of Sterling E. Tipton, Esq., dated September 30, 2013 is deemed served and filed, effective upon service of a copy of this order with notice of entry; and it is further

ORDERED that to the extent that defendants Commercial Board of the Lincoln Center Condominium and Board of Managers of the Commercial Board of the Lincoln Square Condominium seek dismissal

of the complaint pursuant to CPLR 3211(a)(1), such cross motion is denied.

This is the decision and order of the court.

Dated: March 21, 2014

ENTER:

~~Debra A. James~~
DEBRA A. JAMES J.S.C.

FILED

MAR 26 2014

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NEW YORK