

Mercury Pub. Affairs, LLC v Gramercy Park Servs., LLC
--

2017 NY Slip Op 32094(U)

June 28, 2017

Supreme Court, New York County

Docket Number: 104570/11

Judge: Doris Ling-Cohan

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
--

This opinion is uncorrected and not selected for official publication.
--

EA
6/30/17
E

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY
PRESENT: Hon. Doris Ling-Cohan, Justice **Part 36**

MERCURY PUBLIC AFFAIRS, LLC, D/B/A
IGR GROUP and FHGR,

Plaintiff,

-against-

GRAMERCY PARK SERVICES, LLC,
GRAMERCY PARK MEDICAL GROUP P.C.,
and RAYMOND SANCHEZ,

Defendants.

INDEX NO. 104570/11

MOTION SEQ. NO. 006

The following papers, numbered 1-3 were considered on the motion to vacate a default judgment:

PAPERS

Notice of Motion/Order to Show Cause, — Affidavits — Exhibits & Memo —
 Answering Affidavits — Exhibits (& memo) —

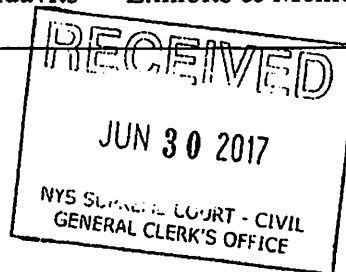
NUMBERED

1, 2

3

Cross-Motion: [] Yes [X] No

Upon the foregoing papers, it is



ORDERED that defendant Raymond Sanchez's ("Sanchez") second motion pursuant, to CPLR § 5015 to vacate the October 30, 2013 default judgment entered against him is denied, as detailed below.

FILED
JUN 30 2017

Defendant Sanchez's first motion to vacate the October 30, 2013 default judgment (motion number 005) was denied by this court in a decision/order dated July 8, 2014, (over two (2) years ago), for failure to establish a sufficient excuse for his numerous defaults, which included his nonappearance at numerous court dates, as well as his failure to comply with court orders relating to the timely completion of discovery. Rather than appealing the July 8, 2014 order or moving to renew and/or reargue this court's denial of his prior motion to vacate the default judgment, defendant Sanchez filed a second motion to vacate the October 30, 2013 default judgment (within motion,

COUNTY CLERK'S OFFICE
 NEW YORK

sequence number 006), over two (2) years after his first motion was denied.

It is noted that, despite defendant Sanchez's default in timely filing an answer in this case, this court, nevertheless, previously granted defendant Sanchez's motion to vacate his initial default, and gave defendant Sanchez an opportunity to submit a late answer (*see* decision/order dated January 4, 2012, Motion Sequence No. 001).

As specifically indicated in this court's order dated July 8, 2014, which denied defendant Sanchez's first motion to vacate the October 30, 2013 default judgment:

"this is not defendant Sanchez's first default. As reflected in the history of the case...there were a series of defaults by defendant, during the course of the within litigation...Defendant Sanchez failed to timely file an answer, which resulted in the filing by plaintiff of a motion for a default judgment. By order dated January 4, 2012, this court denied plaintiff's motion for a default judgment against defendant Sanchez and granted defendant Sanchez's cross-motion for leave to file a late answer...

A preliminary discovery conference order was issued by this court dated January 4, 2012, and pursuant to such order, this case was scheduled for a discovery compliance conference on March 16, 2012. At the March 16, 2012 conference, defendant Sanchez appeared *pro se* and by "so ordered" stipulation dated March 16, 2012, deposition dates were rescheduled as they had not been completed as provided in the preliminary conference order, with a further discovery conference scheduled for May 4, 2012. After conference on May 4, 2012, at which defendant Sanchez also appeared *pro se*, this court issued an order again rescheduling the parties' depositions, which had yet to be completed, and scheduling a further conference for June 15, 2012.

Defendant Sanchez failed to appear at the June 15, 2012 discovery conference, as well as the discovery conference scheduled for July 20, 2012. By order dated June 15, 2012, defendant Sanchez was specifically warned that his failure to appear at the July 20, 2012 conference would result in the granting of a default against him, in accordance with 22 NYCRR §202.27.

Thus, by order dated July 20, 2012, this court entered a default against defendant Sanchez, based upon his non-appearance at the two (2) previously scheduled discovery conferences, and referred the matter to a Special Referee, for an inquest on the issue of damages. Additionally, by order dated July 20, 2012, defendant

Sanchez's motion for summary judgment was denied, also based upon his failure to appear on the return date.

By order dated March 7, 2013, a second order was issued granting default against defendant Sanchez, for his failure to appear on his motion for reargument scheduled for November 21, 2012 and January 23, 2013, with an inquest to be held as to damages before a Special Referee. On or about, May 21, 2013, an inquest was held before Special Referee Lancelot B. Hewitt, at which defendant again failed to appear. By order dated August 8, 2013, it was determined that judgment be entered against defendants Gramercy Park Services, LLC and Raymond Sanchez, in the amount of \$96,400. On October 30, 2013, a judgment was entered in the amount of \$96,400, plus interest, costs and disbursements, totaling \$100,785.72" (emphasis supplied).

In the within motion, defendant Sanchez again argues that he has a reasonable excuse and a meritorious defense to warrant vacatur of the October 30, 2013 default judgment. Defendant Sanchez also argues that the default judgment should be vacated on the grounds of "fraud, misrepresentation, or other misconduct of [sic] the part of the plaintiff" and "newly-discovered evidence which if introduced at trial, would probably have produced a different result and which could not have been discovered in time to move for a new trial" (Notice of Motion, at 1-2).

CPLR §5015 (a)(1) permits a court to vacate a default judgment where there has been an "excusable default" by defendant, upon a showing of both a justifiable excuse for the default and a meritorious defense. *Navarro v A. Trenkman Estate, Inc.*, 279 AD2d 257, 258 (1st Dept 2001). Vacatur may also be sought upon, *inter alia*, a sufficient showing of "newly-discovered evidence which, if introduced at the trial, would probably have produced a different result and which could not have been discovered in time to move for a new trial" and/or, based upon "fraud, misrepresentation, or other misconduct of an adverse party" (CPLR § 5015 [1] and [3])[emphasis supplied]).

In the within motion, defendant Sanchez, again fails to supply a sufficient excuse for his many defaults in this case, both in appearing at court conferences and in complying with prior court

orders, to warrant vacatur of the October 30, 2013 default judgment. While defendant Sanchez conclusively and broadly states as his alleged “excuse” for his “default” that he was “not well” and under the care of Dr. Felicita, similar to what he asserted in his prior motion to vacate the default judgment, defendant Sanchez again fails to provide an explanation as to each of his numerous defaults in appearing before this court and in failing to comply with court orders with respect to the completion of discovery. Moreover, while defendant Sanchez also mentions an affidavit by Dr. Felicitas, no affidavit has been supplied in the papers submitted on the within motion. Defendant also, again fails to provide a sufficient excuse for his failure to appear at the numerous previously scheduled court ordered depositions in this case. Thus, as defendant Sanchez has failed to supply a sufficient excuse for his pattern of defaults in this case (consisting of at least six (6) non-appearances on scheduled court dates), the motion to vacate the default judgment is denied. *See Saunders v. City of New York*, 283 AD2d 213 (1st Dept 2001)(defendant’s failure to appear at four scheduled court dates evinces a complete lack of regard for the court and the legal process, and not excusable); *Utica Mutual Insurance Company v. McCorvey, Jr.*, 116 AD3d 560 (1st Dept 2014)(pattern of defaults warranted denial of motion to vacate default judgment).

Additionally, while defendant Sanchez claims that he has a “valid claim and defense” against plaintiff in this breach of contract action, he fails to provide the court with any factual support for his conclusory assertion and, again, as in his prior motion, the within motion is only supported by his self-serving conclusory affidavit.

With respect to defendant Sanchez’s claim of alleged fraud, misrepresentation or misconduct, he merely conclusively states that he has “a valid claim against plaintiff’s partner in that they defrauded [him] for [his] share of the ownership of the corporation” (¶35, Affidavit in Support [emphasis

supplied]), without any details or particulars as to any fraud, misrepresentation or misconduct, on the part of plaintiff. Additionally, it is noted that defendant Sanchez has also commenced what appears to be a related lawsuit in this court against Larry Kroll, Gramercy Park Services, LLC and Comprehensive Consulting, Inc., which remains pending, in which he asserts claims of, *inter alia*, fraud. (*Raymond Sanchez, Guillermo Seco and Gramercy Park Medical Group, P.C. v. Larry Kroll, Gramercy Park Services, LLC and Comprehensive Consulting, Inc.*, Index No.: 651458/2012)

With respect to defendant Sanchez's claim of "newly-discovered evidence which if introduced at trial, would probably have produced a different result which could not have been discovered in time to move for a new trial", notably, there was no trial in this case, but, rather, only an inquest on the issue of damages, which resulted from defendant Sanchez's numerous defaults. Moreover, defendant Sanchez failed to establish that any newly discovered evidence existed which would have produced a different result and provided a basis for vacatur.

Accordingly, it is

ORDERED that defendant Raymond Sanchez's second motion to vacate the default judgment dated October 30, 2013, is denied; and it is further

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this decision/order, with notice of entry, upon all parties.

Dated: 6/28/17


DORIS LING-COHAN, J.S.C.

FILED

JUN 30 2017

Check one: ☒ FINAL DISPOSITION
Check if Appropriate: ☐ DO NOT POST

☐ NON-FINAL DISPOSITION

COUNTY CLERK'S OFFICE
NEW YORK