

Panorama Intl. Contr., Inc. v Tareen
2018 NY Slip Op 32563(U)
October 10, 2018
Supreme Court, New York County
Docket Number: 152296/2013
Judge: Arlene P. Bluth
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NYSCEF DOC. NO. 141

RECEIVED NYSCEF: 10/11/2018

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH

PART

IAS MOTION 32

Justice

INDEX NO. 152296/2013

PANORAMA INTERNATIONAL CONTRACTING, INC.,

MOTION DATE 09/20/2018

Plaintiff,

MOTION SEQ. NO. 005, 006

- v -

ALEEM TAREEN, SAJEEDA ALEEM, COMMUNICATION
BRIDGE, INC., REAL ESTATE ADVISORY CO.

DECISION AND ORDER

Defendants.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 91-97, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139

were read on this motion to/for **DECISION/ORDER/JUDGMENT/AWARD**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 140

were read on this motion to/for **CONTEMPT**

Motion Sequence Numbers 005 and 006 are consolidated for disposition. The motion (MS005) by defendants to vacate a default judgment is denied. The motion (MS006) to hold defendants Tareen and Aleem in contempt for willfully failing to comply with subpoenas is granted only to the extent that these defendants must appear for a deposition on or before November 30, 2018.

Background

In this action, plaintiff alleges that it loaned \$56,000 to defendants and that all defendants (jointly and severally) agreed to pay it back. Plaintiff contends that defendants never repaid the loan. On September 12, 2016, this Court granted plaintiff's unopposed motion (MS003) to strike

defendants' answer for failure to comply with discovery or attend discovery conferences (*see* NYSCEF Doc. No. 65).

On February 8, 2017, the Court granted plaintiff's unopposed motion for a default judgment and awarded a judgment to plaintiff for \$56,000 plus statutory interest from January 1, 2009 (NYSCEF Doc. No. 82).

Defendants' Motion to Vacate

"To vacate a default, a party must demonstrate both a reasonable excuse and the existence of a meritorious defense; certain law office failures may constitute reasonable excuses" (*Terrapin Indus., LLC v Bank of New York*, 137 AD3d 569, 570, 27 NYS3d 153 [1st Dept 2016] [internal quotations and citation omitted]).

Defendants move to vacate the default judgment on the ground that they responded to discovery and claim that they never received plaintiff's motion for a default judgment. Defendants argue that they were deprived of their right to respond to plaintiff's default judgment motion by "unfair means" and this case should be decided on the merits.

In opposition, plaintiff claims that the record shows that defendants intentionally delayed this case by not promptly responding to discovery requests and simply ignoring its motions and this Court's orders. Plaintiff contends that defendants have not stated a reasonable excuse for their default or a meritorious defense.

The Court finds no reason to vacate the default judgment because defendants have not stated a reasonable excuse for their default. As an initial matter, the Court observes that defendants failed to oppose both Motion Sequence Number 003 (striking the answer) and 004 (default judgment). Defendants cannot ignore this case for years and expect this Court to give

them another chance. This is not a case where a default judgment was awarded against defendants who never appeared. Instead, the record in this action demonstrates that defendants answered, attended conferences and opposed motions throughout 2013 and 2014 before ignoring the case for the last four years.

Defendants make no reference to plaintiff's affidavit of service for MS004 (the motion for a default judgment), which states that the motion was mailed to counsel for defendants' office (NYSCEF Doc. No. 81). Simply claiming that the motion was not received does not establish a reasonable excuse for default under these circumstances. Defendants do not claim that it was mailed to the wrong address or articulate a law office failure that might excuse the default. Defendants merely assert the conclusory position that they never got the motion. Moreover, this is an e-filed case—every motion filed by plaintiff, including the default judgment motion, was publicly available. A simple review of this case's docket on either NYSCEF or The Supreme Court Records On-Line Library ("SCROLL") would let defendants know about either motion.

Defendants have also not stated a meritorious defense. Despite the fact that defendants claim that the \$56,000 at issue was an investment rather than a loan, two of the three checks submitted by plaintiff say "loan" on the memo line (*see* NYSCEF Doc. No. 137). There is no basis to find that plaintiff considered the money to be a loan.

Plaintiff is not entitled to costs and fees for this motion—plaintiff did not cross-move for this requested relief and defendants are entitled to try to vacate a default judgment. The fact that defendants were unsuccessful does not automatically justify plaintiff's request for costs and fees.

Plaintiff's Motion for Contempt (MS006)

Plaintiff moves to hold defendants Tareen and Aleem in contempt for failing to comply with their subpoenas dated February 15, 2018. Plaintiff contends that after defendants failed to satisfy the judgment, it served subpoenas on Tareen and Aleem on February 27, 2018 that directed these defendants to appear on March 15, 2018 and give evidence about their financial condition. Plaintiff maintains that these defendants failed to appear.

In-opposition, defendants contend that "The defendant did not willfully failed [sic] to comply with 'Subpoenas.' The defendant was sick. He has a delicate health because of his surgery" (NYSCEF Doc. No. 140 at 1). Defendants also ask this Court (but do not cross-move) to vacate the default judgment that is the subject of MS005. Defendants argue that plaintiff moved to hold defendants in contempt after defendants had already moved to vacate the default judgment.

The Court grants plaintiff's motion to the following extent: Defendants Aleem and Tareen must appear for a deposition and give testimony and evidence concerning their financial assets. At this deposition, these defendants must produce relevant documents, including all personal bank statements from January 2012 through the present and all personal income tax returns from 2012 through the present. The deposition must occur on or before November 30, 2018 unless good cause shown.

Defendants have argued that a defendant has health problems, although the Court is unable to discern whether both Tareen and Aleem, or only one of them, suffer from health problems. Any failure to appear for health issues must be supported with official documentation from medical providers. If defendants do not comply with this order, then they may be held in contempt of Court if a motion is made for such relief.

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Accordingly, it is hereby

ORDERED that defendants' motion to vacate plaintiff's default judgment is denied; and
it is further

ORDERED that plaintiff's motion to hold defendants in contempt is granted only to the
extent that defendants must appear for a deposition with the documents listed above on or before
November 30, 2018.

10.10.18
DATE

CHECK ONE:

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CASE DISPOSED

☐

GRANTED

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DENIED

APPLICATION:

☐

SETTLE ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☐

NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☒

OTHER

☐

REFERENCE

ARLENE P. BLUTH, J.S.C.

~~HON. ARLENE P. BLUTH~~