

South Bronx Community Lemle Wolf LLC v Bluma
2019 NY Slip Op 30312(U)
February 14, 2019
Civil Court of the City of New York, Bronx County
Docket Number: 900907/18
Judge: Sabrina B. Kraus
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: PART 52

SOUTH BRONX COMMUNITY LEMLE
WOLF LLC

X

Petitioner - Landlord

-against-

DECISION & ORDER

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WERONIKA PAULINA BLUMA
235 Cypress Avenue - Stores 1A & 1B
Bronx, New York 10454

HON. SABRINA B. KRAUS

Respondent-Tenant

XYZ Corp

Respondent-Undertenant

X

BACKGROUND

These summary nonpayment proceeding were commenced by South Bronx Community Lemle Wolf LLC (Petitioner) against Weronika Paulina Bluma (Respondent) seeking to recover possession of Stores 1A and 1B at 235 Cypress Avenue, Bronx, New York 10454 Subject Premises), based on the allegation that Respondent had failed to pay rent due for the Subject Premises. Respondent operates a day care center from the Subject Premises.

PROCEDURAL HISTORY

Petitioner issued ten day rent demands dated April 16, 2018 seeking rents for periods between February and April 2018 , as well as payment for a water bill for Store 1A. The petitions were filed on June 15, 2018, and proof of service was filed June 21, 2015.

Respondent appeared *pro se* on June 28, 2018 and filed an answer alleging that no rent demand had been made and that there were repairs necessary in the Subject Premises. Specifically Respondent alleged that there was no cold water in two of the bathrooms.

An initial court date was set for July 9, 2018. The proceeding was adjourned to August 9, 2018. On August 9, 2018, Respondent appeared by counsel, Brian Ward (Ward) who filed a notice of appearance. The parties entered into a stipulation agreeing that traverse was waived and that Respondent could serve an amended answer by August 31. Trial was set for September 26, 2018 at 9:30 am.

Respondent filed an amended answer on September 26, 2018. The answer admitted that Respondent is in occupancy pursuant to a written lease agreement, and asserted defenses of partial payment and partial constructive eviction based on alleged failure to provide services.

Respondent was not ready to go to trial on September 26, 2018 and made an application for an adjournment which was opposed by Petitioner. The request to adjourn was granted by the court (Doherty, J) pursuant to an order which conditioned the adjournment on payment of \$7439.28 by October 3, 2018, and payment of October rent by October 31, 2018. The court set November 5, 2018 as a trial date and marked the matter final as against Respondent.

On November 5, 2018, Ward again appeared for Respondent and sought a further adjournment of the trial. The parties stipulated to adjourn the trial to December 10, 2018 and that the trial would be marked final. October rent was tendered and accepted in court and Respondent stipulated to amend the petition to include all rent due through November 2018.

On December 10, 2018, Bart Mayol (Mayol) appeared for the first time alleging that he was appearing of counsel to Ward. The trial started that morning. Prior to the lunch break,

Mayol requested an adjournment because he wished to appear on another matter in a different county. Mayol's request was denied, and Mayol was reprimanded for accepting to appear of counsel on a matter marked final for trial knowing that he had a conflict before he accepted the appearance. Mayol was directed by the court to advise any other matters that he was actually engaged in trial and to appear promptly at 2 pm to continue the trial.

Mayol elected to ignore the court order, left the county to attend to his other business and failed to return as ordered by the court at 2 pm. The court held the case open and counsel and even Respondent all waited from 2 pm to 2:30 but Mayol failed to return within 30 minutes of the time he was directed to appear for continued trial and the court awarded Petitioner a judgment on default for the months sued for in the petition.

THE PENDING MOTION

On December 10, 2018, after the default had been entered Mayol submitted a consent to change attorney signed by Ward's attorney in fact.

Nearly one month after defaulting, Mayol now moves on behalf of Respondent for an order vacating the default. The motion was initially returnable on January 3, 2019. The motion was adjourned to January 22, 2019. On January 24, 2019, the motion was marked submitted and the file was referred to this court, now sitting in New York County Civil Court.

RESPONDENT HAS FAILED TO ALLEGE EITHER AN EXCUSABLE DEFAULT OR A MERITORIOUS DEFENSE

Counsel's Intentional Failure to Return at 2pm for Continued Trial Is Not Excusable

A party seeking to be relieved of a default must establish both a reasonable excuse for the default and a meritorious defense [CPLR § 5015(a)(1); *Eretz Funding Ltd v Shalosh Associates* 266 AD2d 184].

However, it is well settled that an intentional default is not excusable (*see, Roussodimou v. Zafiriadis*, 238 A.D.2d 568; *Perellie v. Crimson's Rest.*, 108 A.D.2d 903).

It was clear that when counsel made his request just prior to 1 pm for leave to attend to another matter in another county, that he would not be able to do so and return for the 2pm trial as ordered by the court. In fact, knowing that he was to be engaged elsewhere at 2pm, Mayol had no business agreeing to appear of counsel for the trial of this matter earlier that day. It was clear to counsel that the court had directed him to make other arrangements for his other case and that if he failed to return at 2pm the court would hold his client in default. Mayol intentionally chose to ignore the court and leave the courthouse to travel to another county to handle another matter. Mayol's intentional default is not excusable.

The Judgment Entered by the Court is all for rent due prior to the expiration of the lease

The sole affirmative defense alleged by Respondent in its moving papers is that lease expired in June 2018. The default judgment awarded by the court were for rents due prior to the expiration of the lease. Thus by Respondent's own admission there is no meritorious defense to the judgment entered.

Having realized after receiving Petitioner's opposition that same did not in fact constitute a defense, Respondent attempts to raise new issues in its reply papers regarding the deed. In addition to being improperly raised on reply, this issue is irrelevant as Petitioner has standing as lessor to maintain the proceeding (RPAPL § 721).

Based on the foregoing, the motion is denied in its entirety. All stays are vacated and the warrant of eviction shall issue forthwith.

This constitutes the decision and order of this court.

Dated: February 14, 2019
New York, New York

Hon. Sabrina B. Kraus
JCC

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