

David v Castleberry
2019 NY Slip Op 30469(U)
January 2, 2019
Supreme Court, Kings County
Docket Number: 514545/2017
Judge: Richard Velasquez
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At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 2nd day of January, 2019.

PRESENT:
HON. RICHARD VELASQUEZ

Justice.

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TAMEKA DAVID,

Plaintiff(s),

Index No.: 514545/2017

-against-

Decision and Order

VALARIE CASTLEBERRY,

Defendant(s).

-----X

The following papers numbered 1 to 3 read on this motion:

Papers

Numbered

Notice of Motion/Order to Show Cause
Affidavits (Affirmations) Annexed _____

1

Opposing Affidavits (Affirmations) _____

2

Memorandum of Law _____

3

After oral argument and a review of the submissions herein, the Court finds as follows:

Defendant, VALARIE CASTLEBERRY, moves by Order to Show Cause for an order 1) vacating and setting aside defendant's default; 2) upon vacating the default granting defendant further opportunity to oppose plaintiff's motion dated July 25, 2017, or leave to serve and file a late answer; 3) Temporarily, preliminarily, and/or permanently enjoining and restraining the Plaintiff, her agents, employees, officers, and all persons

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known and unknown acting on plaintiff's behalf or otherwise from transferring title to the subject premises; 3) Temporarily, preliminarily, and/or permanently enjoining and restraining the Plaintiff, her agents, employees, officers, and all persons known and unknown acting on plaintiff's behalf or otherwise from interfering with defendants legal possession of the subject premises.

FACTS

It is alleged that on or about October 6, 2004 plaintiff conveyed the premises to the defendant by deed dated October 6, 2004 and duly recorded on December 14, 2004. Thereafter defendant rented premises to plaintiff by duly executed lease agreement as explained further below. On or about July 20, 2017 defendant served upon plaintiff a thirty (30) day notice of termination upon expiration of this notice defendant served a Notice of Petition and Petition which sought legal possession of the subject premises based upon plaintiff expiration of plaintiff's month to month tenancy. The basis on this month to month tenancy was the expiration of an executed written leasehold agreement between the parties with said rental term lasting for a period of one (1) year commencing December 1, 2006 and ending November 30, 2007. See Exhibit E of defendants OTSC. On August 24, 2017 plaintiff served defendant with the underlying summons and complaint and Notice of Pendency. Thereafter, plaintiff moved by order to show cause to stay the defendant's summary eviction proceeding. By an order dated May 2, 2018 the court granted the plaintiff's order to show cause on default. The instant proceeding follows.

ANALYSIS

First, the court shall address defendants request to vacate the default judgment. CPLR 5015(a) allows for the following grounds for vacatur of a judgment or order: "excusable default; newly discovered evidence; fraud, misrepresentation, or other

misconduct; lack of personal or subject matter jurisdiction; and reversal, modification, or vacatur of a prior judgment or order. Additionally, a court has inherent discretionary power to vacate an order or judgment in the interests of substantial justice." See *Woodson v. Mendon Leasing Corp.*, 100 N.Y.2d 62, 760 N.Y.S.2d 727, 790 N.E.2d 1156 (2003).

To vacate their default in appearing, the defendant is required to demonstrate both a reasonable excuse for the default and a meritorious defense to the action (see *CPLR* 5015 [a] [1]; *Zaidi v New York Bldg. Contrs., Ltd.*, 61 A.D.3d 747 [2009]; *Vasquez v New York City Hous. Auth.*, 51 A.D.3d 781, 782 [2008]; *Conserve Elec., Inc. v Tulger Contr. Corp.*, 36 A.D.3d 747 [2007]).

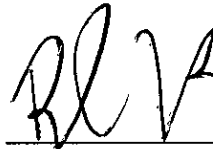
In the present case, the defendant has demonstrated both a reasonable excuse for the default and a meritorious defense to the action. First, the reasonable excuse due to law office failure is widely accepted by this court a reasonable excuse. Second, a meritorious defense is established by documentary evidence of a lease agreement between the plaintiff and the defendant which could be successful in defeating the plaintiff's claim of adverse possession as a matter of law. In the interests of justice, the default must be vacated in the present case.

Accordingly, Defendant's Order to Show Cause is hereby granted in its entirety. Specifically, Defendants requests for an order vacating and setting aside defendant's default is hereby granted; and upon vacating the default it is hereby ordered that the defendant is granted leave to serve and file a late answer. It is further ordered that the Plaintiff, her agents, employees, officers, and all persons known and unknown acting on plaintiff's behalf or otherwise is temporarily, enjoined and restrained from transferring title to the subject premises; It is further ordered that the Plaintiff, her agents, employees,

officers, and all persons known and unknown acting on plaintiff's behalf or otherwise are temporarily enjoined and restrained from from interfering with defendants legal possession of the subject premises during the pendency of this litigation, for the reasons stated above.

This constitutes the Decision/Order of the Court.

Date: January 2, 2019



RICHARD VELASQUEZ, J.S.C.

So-Ordered
Hon. Richard Velasquez

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