

Santos v Rodriguez
2019 NY Slip Op 31731(U)
June 19, 2019
Supreme Court, New York County
Docket Number: 151545/2019
Judge: Alexander M. Tisch
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ALEXANDER M. TISCH PART IAS MOTION 18EFM

Justice

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INDEX NO. 151545/2019

YANIRY RAVEL SANTOS

MOTION DATE 06/18/2019

Plaintiff,

MOTION SEQ. NO. 001

- v -

NOEL RODRIGUEZ,

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10

were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL

Upon the foregoing documents, it is

ORDERED that the branch of the motion seeking default judgment against defendant Rodriguez is denied. The motion should be made when the action is consolidated, so that the defendant at least knows which index number he should be answering. Further, service of process appears to have been made pursuant to CPLR 308 (2), which requires that "proof of such service shall be filed with the clerk of the court designated in the summons within twenty days of either such delivery or mailing, whichever is effected later; service shall be complete ten days after such filing." Here, plaintiff failed to file proof of service; therefore, service is incomplete. "Since the defendant's response time does not begin to run until service is complete, a plaintiff who fails to file proof of service in a situation where such filing is necessary may not enter a default judgment against a defendant who is seemingly tardy in appearing. If service is not complete, no duty to appear arises" (Vincent Alexander, McKinney's Cons Laws of NY, Book 7B, C320:2, citing Rosato v Ricciardi, 174 AD2d 937, 938 [3d Dept 1991]).

The Court will permit plaintiff leave to file the late proof of service, and the affidavit of service shall be filed separately in the consolidated index number within 20 days (*see Paracha v County of Nassau*, 228 AD2d 422, 423–24 [2d Dept 1996]). Default judgment may be sought 40 days after such filing (*see* CPLR 308 [2] [service complete 10 days after filing]; CPLR 320 [a] [defendant given 30 days to appear after service is complete]). Accordingly, plaintiff is granted leave to renew this branch of the motion for default judgment, which should not prejudice the plaintiff since the time to move for default judgment has not yet begun to run (*see id.*; CPLR 3215 [c]).

And it is further ORDERED that the branch of the motion for consolidation is granted and the above-captioned action is consolidated in this Court with *Ravel Santos v 504 West 139 Street Housing Development Fund Corporation*, Index No. 151187/2018, pending in this Court; and it is further

ORDERED that the consolidation shall take place under Index No. 151187/2018 and the consolidated action shall bear the following caption:

YANIRY RAVEL SANTOS,

Plaintiff,

INDEX No.:

-against-

151187/2018

504 WEST 139 STREET HOUSING DEVELOPMENT FUND
CORPORATION and NOEL RODRIGUEZ,

Defendants.

And it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the Court (60 Centre Street, Room 141 B), who shall consolidate the documents in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that counsel for the movant shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed; and it is further

ORDERED that service of this order upon the Clerk of the Court shall be made in hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents being consolidated in the consolidated case file under the index number of the consolidated action in the New York State Courts Electronic Filing System or make appropriate notations of such documents in the e-filing records of the court so as to ensure access to the documents in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who is hereby directed to reflect the consolidation by appropriately marking the court’s records; and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office shall be made in hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, shall be made in accordance with the procedures set forth in the aforesaid *Protocol*; and it is further

ORDERED that movant shall serve a copy of this order with notice of entry upon defendant NOEL RODRIGUEZ via certified mail, return receipt requested, within 30 days, with a notice indicating that his appearance, if any, must be made under the consolidated index number; and it is further

ORDERED that all parties are directed to appear for a compliance conference in Part 18, Room 623 of 111 Centre Street, New York, New York, on July 17, 2019, at 9:30 AM.

This constitutes the decision and order of the Court.



HON. ALEXANDER M. TISCH

6/19/2019
DATE

ALEXANDER M. TISCH, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: