

Compact HVAC Inc. v 188 Riv. Rd. LLC
2019 NY Slip Op 34107(U)
June 27, 2019
Supreme Court, Nassau County
Docket Number: 606299/2016
Judge: Antonio I. Brandveen
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\$37,513.
5/25/17
(132892)

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: ANTONIO I. BRANDVEEN
J. S. C.

COMPACT HVAC INC.,

TRIAL / IAS PART 25
NASSAU COUNTY

Plaintiff,

Index No. 606299/2016

- against -

Motion Sequence Nos. 003, 004

188 RIVER ROAD LLC, MYLAR RUTNER
and JESSI SINGER,

Defendants.

The following papers having been read on this motion:

Notice of Motion, Cross Motion, Affidavits, & Exhibits .	<u>1, 2</u>
Answering Affidavits	<u>3, 4</u>
Replying Affidavits	<u>5</u>
Short form orders dated April 28 & August 16, 2017	<u>6-7</u>

UPON DUE DELIBERATION AND CONSIDERATION BY THE COURT of the foregoing papers, this motion is decided as follows:

The plaintiff, Compact HVAC, Inc., moves (sequence # 003) for an order pursuant to CPLR 2308, 5223, and 5224 and Judiciary Law §§ 753,756, 770, 773, and 774 holding in contempt the defendants/judgment debtors, 118 River Road, LLC and Mylar Rutner, as well as defendant Jessi Singer. The plaintiff asserts that the defendants failed to comply with the information subpoenas issued to them in this action.

The plaintiff also moves for an order awarding it the amount of its actual loss or injury caused by the defendants' failure to comply with the subpoenas, or failing proof of the same, awarding the plaintiff costs and expenses of bringing this motion including its legal fees and disbursements plus \$250, from each defendant. The plaintiff also moves for an order directing the defendants to comply with the subpoenas, and directing, should the defendants fail to comply with the subpoenas, the issuance of a warrant to the Sheriff

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to bring the defendants before this Court, and, if the defendants continue to refuse to comply, that they be incarcerated until they fully comply.

The defendants 188 River Road LLC, Mylar Rutner, and Jessi Singer cross-move (sequence# 004) for an order vacating the judgment entered against them. The defendants seek the order based upon fraud, misrepresentation and other misconduct of the plaintiff. The defendants also cross-move for an order vacating the default judgment entered against the them in the interests of justice. The defendants further cross-move for an order denying the plaintiffs' motion in its entirety.

On April 28, 2017, this Court granted in favor of the plaintiff a default judgment against the defendants in the sum of \$29, 606.31, together with interest at the rate of 18.5 per cent per annum from July 28, 2016, plus cost, disbursements and reasonable counsel fees in the sum of \$48700.00. The defendants then moved to vacate their default and the default judgment; their motion was denied by the order of this Court dated August 16, 2017 (Brandveen, J.). That order was never appealed by the defendants, not did the defendants move to reargue their motion.

The Court will first address defendants' cross-motion to vacate the default judgment entered against them.

“Under CPLR 5015(a), a court is empowered to vacate a default judgment for several reasons, including excusable neglect; newly-discovered evidence; fraud, misrepresentation or other misconduct by an adverse party; lack of jurisdiction; or upon the reversal, modification or vacatur of a prior order’ (Woodson v Mendon Leasing Corp., 100 NY2d 62, 68; see CPLR 5015[a]; Wells Fargo Bank, N.A. v Choo, 159 AD3d 938, 938; HSBC Bank USA v Josephs-Byrd, 148 AD3d 788; 40 BP, LLC v Katatikarn, 147 AD3d 710). ‘However, CPLR 5015(a) does not provide an exhaustive list as to when a default judgment may be vacated, and a court may vacate its own judgment for sufficient reason and in the interests of substantial justice’ (40 BP, LLC v Katatikarn, 147 AD3d at 711; see Woodson v Mendon Leasing Corp., 100 NY2d at 68). Although the court retains ‘inherent discretionary power to relieve a party from a judgment or order for sufficient reason and in the interest of substantial justice’ (Galasso, Langione & Botter, LLP v Liotti, 81 AD3d 884, 885; see Ladd v Stevenson, 112 NY 325, 332; Katz v Marra, 74 AD3d 888, 890) ‘[a] court's inherent power to exercise control over its judgment is not plenary, and should be resorted to only to relieve a party from judgments taken through [fraud], mistake, inadvertence, surprise or excusable neglect’ (Matter of McKenna v County of Nassau, Off. of County Attorney, 61 NY2d 739, 742 [internal quotation marks omitted]; see Wells Fargo Bank Minn., N.A. v Coletta, 153 AD3d 757, 758 [internal quotation marks omitted]; see Wells Fargo Bank Minn., N.A. v Coletta, 153

AD3d 757, 758; HSBC Bank USA v Josephs-Byrd, 148 AD3d at 790)” (CitiMortgage, Inc. v Maldonado, 171 A.D.3d 1007, 1008-1009); see, Cox v Marshall, 161 A.D.3d 1140, 1141-1142).

Here, the circumstances presented warrants the invocation of the court's inherent power to vacate an order in the interests of substantial justice (see Woodson v Mendon Leasing Corp., supra at 68). In reviewing the contract which is the subject of this action, which appears to have been improperly venued in Nassau County, there was no contractual basis upon which the this Court could have granted a judgement against the individual defendants since it appears that they never executed or signed that contract in an individual capacity. Accordingly, even though the individual defendants raised this important fact in their original motion and never reargued or appealed this court's erroneous decision as to them, this Court now vacates the judgment against defendants Rutner and Singer to afford them an opportunity to litigate, on the merits, the basis for the law suit against them individually, in keeping with the strong public policy preference for resolving issues on their merits (see, Gurin v. Pogge, 112 A.D.3d 1028, 1030).

Turning to the plaintiff's motion at bar, the Court finds defendant 118 River Road, LLC, in contempt for its failure to comply with the information subpoenas. Said defendant may purge itself of this contempt citation by paying a fine of \$250.00 to the Nassau County Treasurer, and by complying with the subpoena and producing for a deposition an individual with personal knowledge of the facts on or before August 1, 2019.

Accordingly, the motion by the plaintiff for an order *inter alia* adjudging the defendants in contempt is granted only as to defendant 118 River Road, LLC, to the extent indicated above.

The cross-motion by the defendants for an order, pursuant to CPLR 5015(a)(3) and in the interests of justice, vacating the default judgment entered against them, is granted based on both grounds but only as to defendants Mylar Rutner and Jessi Singer. Said defendants are directed to file and serve verified answers within 20 days after the service of a copy of this order on their attorney, and are permitted to move *inter alia* to change venue pursuant to CPLR § 510 (1).

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Consequently, the Court directs the County Clerk of Nassau County to vacate the judgments against defendants Mylar Rutner and Jessi Singer.

The foregoing constitutes the decision and order of this Court

Dated: **June 27, 2019**

ENTER:



J. S. C.

HON. ANTONIO L. BRANDVEEN

NOT FINAL DISPOSITION

ENTERED

JUL 11 2019

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**

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