

**Hamptons Farms 363, LLC v 363 Beach Rd. Assoc.  
LLC**

2019 NY Slip Op 34258(U)

August 29, 2019

Supreme Court, Suffolk County

Docket Number: Index No. 618376/2018

Judge: Joseph A. Santorelli

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This opinion is uncorrected and not selected for official publication.

**ORIGINAL**

SHORT FORM ORDER

INDEX No. 618376/2018

CAL No. \_\_\_\_\_

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 10 - SUFFOLK COUNTY

**PRESENT:**

Hon. JOSEPH A. SANTORELLI  
Justice of the Supreme Court

MOTION DATE 6-20-19

SUBMIT DATE 8-1-19

Mot. Seq. # 06 - MG

Mot. Seq. # 07 - MotD

-----X

HAMPTONS FARMS 363, LLC,

Plaintiff,

-against-

363 BEACH ROAD ASSOCIATES LLC and STAFFARD  
GARSON,

Defendants.

**ALEXANDER M. DUDELSON, ESQ.**  
*Attorneys for Plaintiff & Third-Party Defendants*  
26 Court Street, Ste 2306  
Brooklyn, NY 11242

**KRIEGSMAN, P.C.**  
*Attorneys for Defendants/Third-Party Plaintiff*  
279 Main Street  
Sag Harbor, NY 11963

-----X  
363 BEACH ROAD ASSOCIATES LLC,

Third-Party Plaintiff,

-against-

STEFAN AMRALY and SANDRA SADOWSKI,

Third-Party Defendants.  
-----X

Upon the following papers numbered 1 to 72 read on this motion vacate default judgment & consolidate; Notice of Motion/ Order to Show Cause and supporting papers 1 - 19 (#06) & 39 - 56 (07); ~~Notice of Cross Motion and supporting papers~~; Answering Affidavits and supporting papers 20 - 33 (#06) & 57 - 67 (#07); Replying Affidavits and supporting papers 34 - 38 (#06) & 68 - 72 (#07); Other       ; (and after hearing counsel in support and opposed to the motion) it is,

The third-party defendants move, in motion delineated as motion #06, for an order vacating their default in answering the third-party complaint. The plaintiff and third-party defendants move, in motion delineated as motion #07, for an order to consolidate the instant action with an action currently pending in Supreme Court, Westchester County entitled *363 Debt LLC v. Stefan Amraly*, Index No. 54810/2019. The defendant/ third-party plaintiff opposes these applications in all respects.

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Motion to Vacate Default

A third-party defendants seek to vacate a default in appearing or answering the third-party complaint in an action on the ground of excusable default must demonstrate a reasonable excuse for the default and a potentially meritorious defense to the action (*Codoner v Bobby's Bus Co., Inc.*, 85 AD3d 843, 844, 925 NYS2d 352 [2d Dept 2011], citing CPLR 5015 [a] [1]; *Citimortgage, Inc. v Brown*, 83 AD3d 644, 919 NYS2d 894 [2011]; *US Consults v APG, Inc.*, 82 AD3d 753, 917 NYS2d 911 [2011]; *Hageman v Home Depot U.S.A., Inc.*, 25 AD3d 760, 761, 808 NYS2d 763 [2006]; *Fekete v Camp Skwere*, 16 AD3d 544, 545, 792 NYS2d 127 [2005]; see also *Anamdi v Anugo*, 229 AD2d 408, 644 NYS2d 804 [2d Dept 1996]). The determination of what constitutes a reasonable excuse for a default lies within the sound discretion of the trial court (see, *Bardales v Blades*, 191 AD2d 667, 595 NYS2d 553 [2d Dept 1993]).

The third-party defendants have demonstrated both a reasonable excuse for their default in failing to serve a timely answer upon the third-party plaintiff as well as the existence of potentially meritorious defenses to the action (see *Weinstein v Schacht*, 98 AD3d 1106, 950 NYS2d 711 [2d Dept 2012]; *Citimortgage, Inc. v Brown*, 83 AD3d 644, 919 NYS2d 894 [2d Dept 2011]; see also *U.S. Bank Nat'l Assn. v Slavinski*, 78 AD3d 1167, 912 NYS2d 285 [2d Dept 2010]). Accordingly, the default must be vacated. Furthermore, the third-party plaintiff should be compelled to accept the third-party defendants' answer in light of the strong public policy that actions be resolved on their merits, the brief delay involved, the third-party defendants' lack of willfulness, and the absence of prejudice to the third-party plaintiff (see *Westchester Med. Ctr. v Allstate Ins. Co.*, 80 AD3d 695, 915 NYS2d 495 [2d Dept 2011]).

**ORDERED** that the motion by third-party defendants, delineated as motion #06, for an order vacating their default in answering the complaint is granted; and it is further

**ORDERED** that third-party defendants shall serve their answer upon the third-party plaintiff within twenty (20) days from service of a copy of this order upon them (see *Arias v First Presbyterian Church*, 97 AD3d 712, 948 NYS2d 665 [2d Dept 2012]; see also *Schonfeld v Blue & White Food Products Corp.*, 29 AD3d 673, 814 NYS2d 711 [2d Dept 2006]); and it is further

**ORDERED** that a copy of this order shall be served upon the Clerk of the County of Suffolk, who is directed to vacate the judgment of default against the third-party defendants, Stefan Amraly and Sandra Sadowski, in favor of third-party plaintiff, 363 Beach Rd Associates LLC; and it is further

**ORDERED** that a copy of this order shall be served by the third party plaintiff on the third-party defendants' attorney by certified mail, return receipt requested and by regular mail on or before September 20, 2019.

Motion to Consolidate

With respect to a change in venue, CPLR 503 (a) provides, in relevant part, as follows:

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(a) Generally. Except where otherwise prescribed by law, the place of trial shall be in the county in which one of the parties resided when it was commenced; or, if none of the parties then resided in the state, in any county designated by the plaintiff. A party resident in more than one county shall be deemed a resident of each such county.

CPLR 510 provides as follows: Grounds for change of place of trial

The court, upon motion, may change the place of trial of an action where:

1. the county designated for that purpose is not a proper county; or
2. there is reason to believe that an impartial trial cannot be had in the proper county; or
3. the convenience of material witnesses and the ends of justice will be promoted by the change

Considering all of the above, including the fact that the instant plaintiffs commenced this action first and the subject matter of both actions involves the same property located in Suffolk County, this Court finds that the ends of justice will best be served by transferring the matter currently pending in Supreme Court, Westchester County to Supreme Court, Suffolk County. Accordingly, plaintiff's and third-party defendants' application for a change of venue is granted.

CPLR § 602(a) provides that "[w]hen actions involving a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all of the matters in issue, may order the actions consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

Since the actions arise from the same incident and involve common questions of fact, a joint trial is appropriate to avoid inconsistent verdicts. Accordingly the application to consolidate is granted to the extent that a joint trial is hereby ordered.

It is,

**ORDERED**, that venue in the action currently pending in Supreme Court, Westchester County entitled *363 Debt LLC v. Stefan Amraly*, Index No. 54810/2019, including all undecided motions and applications, is transferred forthwith to Supreme Court, Suffolk County; and it is further

**ORDERED**, that the movants shall serve a copy of this Order pursuant to CPLR 2103 upon the Clerk of the Supreme Court of Suffolk County and the Clerk of the Supreme Court of Westchester County by overnight mail; and it is further

**ORDERED**, that the Clerk of the Supreme Court of Westchester County is directed forthwith to transfer the entire case and file to the Clerk of the Supreme Court of Suffolk County; and it is further

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**ORDERED** that counsel for the movants shall promptly serve a copy of this Order by first class mail upon all appearing parties in each joined action, and shall promptly thereafter file the affidavit(s) of service with the Suffolk County Clerk; and it is further

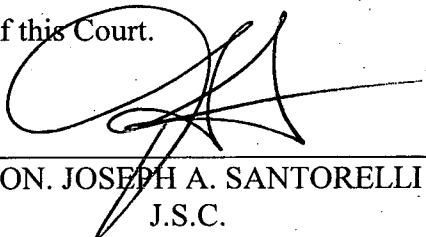
**ORDERED** that each action joined for trial shall retain a separate caption and separate court costs shall be paid in each action, including those costs attendant with the filing of motions, Notes of Issue and Certificates of Readiness for Trial; and it is further

**ORDERED** that all motions interposed in each joined action shall bear a single caption reflecting the action in which said motion is made; however, all motions shall be served upon counsel for all parties appearing in each joined action; and it is further

**ORDERED** that a compliance conference in this action is hereby scheduled to be held on Thursday, September 26, 2019 at 9:30 a.m., in the courtroom of the undersigned located in the Supreme Court, One Court Street, Riverhead, New York. Counsel for the respective parties in each joined action are directed to appear at that time prepared to discuss the joined actions and set a joint discovery schedule.

The foregoing shall constitute the decision and Order of this Court.

Dated: August 29, 2019



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HON. JOSEPH A. SANTORELLI  
J.S.C.