

<b>Adrian v BSD 268 LLC</b>
2020 NY Slip Op 33799(U)
November 13, 2020
Supreme Court, Kings County
Docket Number: 514291/16
Judge: Lawrence S. Knipel
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At an IAS Term, Part 57 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 13<sup>th</sup> day of November, 2020.

P R E S E N T

HON. LAWRENCE KNIPEL,

Justice.

-----X

BARRINGTON ADRIAN,

Plaintiff,

- against -

Index No. 514291/16

BSD 268 LLC,

Defendant.

-----X

The following e-filed papers read herein:

NYSCEF Doc. Nos.

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and  
Affidavits (Affirmations) Annexed \_\_\_\_\_

37-49

Opposing Affidavits (Affirmations) \_\_\_\_\_

50-61

Upon the foregoing papers in this action regarding an alleged foreclosure rescue scheme, plaintiff Barrington Adrian (Adrian) moves (in motion sequence [mot. seq.] two) for an order vacating the default entered against him on April 15, 2019 and restoring this action to the court's trial calendar.

Adrian's counsel affirms that Adrian's prior counsel caused him to default in failing to appear at a status conference on April 15, 2019, at which time the action was marked "dismissed pre-note." Adrian submits an affidavit attesting that his prior counsel misled him regarding the status and progress of the case. Adrian further attests that "[i]n

late September and into October of 2019, a clerk at the King's County courthouse told me that my case had been dismissed in April of 2019 because my attorney failed to appear at a status conference." In November 2019, after several attempts to reach his prior counsel, Adrian ultimately retained new counsel. Adrian's new counsel was not able to obtain the prior counsel's signature on a consent to change attorney form until mid-November. Adrian attests that:

"I never had any intention whatsoever to abandon my case. I have entrusted my case to attorney[ ]s that I believed were there to protect my interests. I am not sophisticated in legal matters and without competent legal counsel I could never save my home.

\* \* \*

"I did my part in retaining what I believed to be competent attorneys to represent me in this action. Each time I spoke with these attorneys, I was assured that my case was on track, and was lead to believe that the case would move slowly because that's just the way the court system in New York works.

"Unfortunately, it is now evident that my case was neglected by my prior attorneys through no fault of my own."

Adrian further attests that he has a meritorious cause of action under the Home Equity Theft Prevention Act (HETPA) because "[a]s alleged in the Verified Complaint, the defendant orchestrated the theft of the equity in my Property, located at and known as 469 East 25<sup>th</sup> Street, Brooklyn . . . through the guise of 'foreclosure relief.'" Adrian attests that "defendant induced me to execute a contract of sale and a deed and other documents transferring title to the subject property to BSD [268 LLC] on January 21,

2015 . . .” Adrian further attests that “[p]rior to transferring the subject property to BSD, I was living in the property with my cousin . . .” According to Adrian, at the closing, his mortgage was not paid off, as BSD had promised, and Adrian only received \$40,000.00. Adrian commenced this action to void the deed and stay BSD’s landlord/tenant action, in which BSD sought to evict Adrian from his alleged home. Now that he has retained new counsel, Adrian intends to proceed expeditiously with his case.

BSD, in opposition, argues that Adrian’s motion should be denied because Adrian has not demonstrated a reasonable excuse for his default, since Adrian and his new counsel describe “not a ministerial or calendaring error committed by Plaintiff’s prior attorneys, but full-blown mismanagement and neglect.” BSD further argues that Adrian does not have a meritorious cause of action under HETPA because he is a property investor and “has not placed in the record a single exhibit that would substantiate the notion that he ever resided at the Property.”

Where a default in appearing in court results from law office failure, the court may “exercise its discretion in the interest of justice to excuse delay or default . . .” pursuant to CPLR 2005 (see *JP Morgan Chase Bank, N.A. v Russo*, 121 AD3d 1048, 1049 [2014]). Here, in the court’s discretion, Adrian’s motion to vacate his default and restore this action to the court’s active trial calendar is granted, since Adrian’s appearance default was not willful, and he has retained new counsel who intends to expeditiously prosecute this action. Accordingly, it is hereby

**ORDERED** that Adrian's motion (in mot. seq. two) is granted, this court's April 15, 2019 order is vacated, and this action is restored to the active trial calendar.

This constitutes the decision and order of the court.

E N T E R,

\_\_\_\_\_  
J. S. C.



Justice Lawrence Knipel