

**Jones v Charles Inniss Hous. Dev. Fund Corp.**

2021 NY Slip Op 30019(U)

January 6, 2021

Supreme Court, New York County

Docket Number: 159308/2018

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 14**

*Justice*

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**INDEX NO. 159308/2018**

RONALD JONES,

**MOTION DATE \_\_\_\_\_**

Plaintiff,

**MOTION SEQ. NO. 003**

- v -

CHARLES INNISS HOUSING DEVELOPMENT FUND  
CORPORATION, WINNRESIDENTIAL (NY) LLC

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

The motion by plaintiff to vacate this Court’s order dismissing this case is denied.

**Background**

On December 11, 2019, this Court issued an order dismissing this case. It noted that “Plaintiff’s deposition was ordered for 6/11/19 and 11/14/19, and was scheduled for 11/21/19— but plaintiff failed to appear. According to defendant’s attorney’s affirmation, plaintiff’s counsel claimed he couldn’t find/contact his client. Accordingly, the case is dismissed. If plaintiff’s attorney contacts his client and has a date certain for a deposition, a motion may be made to vacate his default. Assuming that motion is timely and properly supported, it will be considered” (NYSCEF Doc. No. 39).

Now plaintiff moves to vacate that decision. His attorney claims that on the original date of the deposition, November 22, 2019, her client told her that he had a doctor's appointment. However, his attorney claims that she was unable to reach plaintiff between November 22, 2019 and December 5, 2019 to find another date for the deposition. Counsel for plaintiff asserts she was then sick in early December 2019 and failed to file opposition to the motion.

She contends that plaintiff was in and out of homeless shelters and was in the hospital from December 17, 2019 until April 1, 2020 but is now ready for a deposition. Plaintiff maintains that the instant motion is timely because it was made less than a year after the notice of entry was filed for the decision dismissing this case (that was filed in February 2020).

In opposition, defendants point out that plaintiff did not submit anything to prove plaintiff was in the hospital in early 2020 or even submit an affidavit from plaintiff in support of the motion. Defendants also observe that plaintiff's failure to file opposition to motion sequence 002 is of no moment because the facts are undisputed: plaintiff failed to appear for a Court-ordered deposition.

Plaintiff did not file a reply.

## **Discussion**

The Court denies the motion. While plaintiff is technically correct that the motion is timely under the CPLR, plaintiff has not demonstrated a basis to vacate the Court's order. No affidavit is provided from plaintiff. This raises questions about counsel for plaintiff's ability to reach her client—a key issue given that counsel for plaintiff admits she had trouble locating her client to reschedule the November 2019 deposition. And it renders statements about plaintiff's hospitalization or apparent readiness for a deposition as complete hearsay.

As defendants point out there are no documents submitted to substantiate plaintiff's claims about a hospitalization or that he is now ready to do a deposition. Also absent is any reason why counsel for plaintiff did not move to vacate in December 2019. According to her account, she knew about the motion but was too sick to file opposition (counsel for defendants points out that an attorney was present on the oral argument date of the motion in December 2019).

The Court recognizes that people get sick but counsel for plaintiff did nothing after the Court's decision was uploaded on December 11, 2019. Although her own account claims she returned to the office on December 12, 2019, she waited more than a year to move to vacate. While this Court prefers to decide cases on the merits, the fact is that this is a 2018 case and the plaintiff had not been deposed by December 2019 despite Court orders.

The record in this case shows that plaintiff failed to appear for multiple scheduled depositions and instead of trying to facilitate a prompt new date, he waited over a year to move to vacate. Cases are not meant to drag on forever at a plaintiff's convenience. Plaintiff decided to bring a case in 2018. He apparently did not keep in touch with his attorney and did not make this case a priority. In fact, there really is no direct proof submitted on this motion that plaintiff was hospitalized or that he is currently in communication with his attorney or promise to remain in communication with his attorney.

The Court understands that people's lives are complicated, but plaintiff's papers are devoid of reliable proof sufficient to grant the motion or even a sworn representation that he will work with his attorney and wants another chance. At its core, this is a motion by the attorney with no proof that she is actually in touch with her client now. While it is understandable for her to try to buy some more time for her client, that is not a basis to vacate this Court's decision.

Accordingly, it is hereby

ORDERED that the motion by plaintiff to vacate this Court's decision is denied.

1/6/2021  
DATE

  
Hon. Arlene P. Bluth

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE