

Durrant v Duncan
2021 NY Slip Op 31802(U)
May 24, 2021
Supreme Court, Kings County
Docket Number: 12244/14
Judge: Lara J. Genovesi
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At an IAS Term, Part 34 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on the 24th day of May 2021.

P R E S E N T:

HON. LARA J. GENOVESI,
J.S.C.

MARY DURRANT,

DECISION & ORDER

Plaintiff,

Index No.:12244/14

- against -

JAYCENTH DUNCAN,

Defendant.

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

NYSCEF Doc. No.:

Notice of Motion/Cross Motion and
Affidavits (Affirmations) Annexed _____

2-18, 24-35

Opposing Affidavits (Affirmations) _____

36-45

Reply Affidavits (Affirmations) _____

Plaintiff commenced the instant action for personal injuries by filing a summons and complaint on August 21, 2014. Plaintiff allegedly tripped and fell on the exterior staircase of the property owned by defendant Jaycenth Duncan. Plaintiff's motion for default judgment was granted by the Hon. Martin Solomon on February 25, 2016. An inquest was held before this Court on May 8, 2017 and plaintiff was awarded \$650,000

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plus statutory interest, costs and disbursements. Judgment was entered by the Kings County Clerk, on the defendant's default, on December 3, 2018 (*see* NYSCEF Doc. # 37).

Plaintiff moved by order to show cause, dated December 8, 2020, sequence number six, for contempt for violation and non-compliance with post judgment subpoenas. Due to the Covid-19 pandemic, this order to show cause was amended to include the hyperlink to access this Court's part rules and information on how to appear remotely by way of Microsoft Teams, including a telephone number and conference code for access to the Teams meeting, in the event defendant did not have access to a computer or Microsoft Teams. Defendant, Jaycenth Duncan, appeared on the Microsoft Teams meeting on the return date and agreed to appear for a deposition.

Thereafter, defendant moved by order to show cause dated March 3, 2021, sequence number seven, to vacate her default.

Upon the foregoing papers, it is ordered that these motions are decided as follows:

Plaintiff's order to show cause for contempt, sequence number six, was withdrawn without prejudice, at oral argument.

Defendant's order to show cause to vacate the default judgment, sequence number seven, is denied. Pursuant to CPLR §5015(a)(1), "the court which rendered a judgment or order may relieve a party from it upon such terms as may be just, on motion of any interested person with such notice as the court may direct, upon the ground of: 1.

excusable default, if such motion is made within one year after service of a copy of the judgment or order with written notice of its entry upon the moving party, or, if the moving party has entered the judgment or order, within one year after such entry..." "In order to successfully oppose a motion for leave to enter a default judgment, a defendant who has failed to timely appear or answer the complaint must provide a reasonable excuse for the default and demonstrate the existence of a potentially meritorious defense to the action" (*Maldonado v. Mosquera*, 186 A.D.3d 1352, 129 N.Y.S.3d 15 [2 Dept., 2020]).

In the instant case, the judgment in this matter is dated February 9, 2018, and was entered by the Kings County Clerk's office on February 13, 2018. Notice of Entry of this Judgment was served upon the defendant on June 29, 2018. This order to show cause was not filed until March 4, 2021, more than one year from service of the notice of entry of judgment and is therefore untimely.

Further, defendant failed to provide a reasonable excuse and a meritorious defense. The defendant was the titled owner of the property in question at the time of plaintiff's accident. In support of her request to vacate the default judgment, defendant failed to provide a defense to the underlying action and failed to provide a "reasonable excuse" for her inaction in appearing and/or defending herself herein. Defendant here argues she has little knowledge of the legal process, no appreciation for the foreclosure process that was commenced against her property but was ultimately dismissed. She

further stated that she relied on a realtor to negotiate the underlying claim because a power of attorney was executed. However, a *pro se* defendant's lack of understanding about the legal process is insufficient to constitute a reasonable excuse (*see Wells Fargo Bank, NA v. Besemer*, 131 A.D.3d 1047, 16 N.Y.S.3d 819 [2 Dept., 2015]).

Since the defendant failed to demonstrate a reasonable excuse for her default, this Court need not consider whether she proffered a potentially meritorious defense to the action.

A copy of this order shall be served with notice of entry within 30 days of entry.

ENTER:



Hon. Lara J. Genovesi
J.S.C.

KINGS COUNTY CLERK
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