

Irason, LLC v City of New York
2022 NY Slip Op 30292(U)
January 12, 2022
Supreme Court, New York County
Docket Number: Index No. 656648/2020
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE BLUTH PART 14

Justice

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INDEX NO. 656648/2020

IRASON, LLC, TANIA ESHAGHOFF-FRIEDBERG,

MOTION DATE 01/11/2022

Plaintiffs,

MOTION SEQ. NO. 003

- v -

THE CITY OF NEW YORK, CHRISTOPHER KO, YONG
SOON KO, CASSIE KUO, SUNG HUNG LEE, INKOOK
KANG, YOUNGSAM YU, SYMUSE, INC.

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 77, 78, 79, 80, 81, 82, 83

were read on this motion to/for VACATE and DEFAULT JUDGMENT.

The motion by plaintiffs for a default judgment against certain defendants and to vacate the Court’s decision granting defendant the City of New York’s motion to dismiss is granted in part and denied in part.

This case concerns plaintiffs’ complaints about fines issued against them related to unpermitted work done on a property they own. In 2015, the DOB received an application for an alteration permit for construction at this site. The applicant was Kang Inkuk and DOB later approved the permit application. In February 2016, DOB received a letter stating that the applicant’s seal and signature had been used without his consent to submit applications to DOB. DOB then issued a stop work order based on the fact that the applicant did not authorize the permit application.

DOB then issued various summons related to the project which included doing work outside the scope of the permit, failure to comply with the Commissioner’s Order, doing work in

2018 despite the existence of stop work order (NYSCEF Doc. Nos. 62-67). Plaintiffs attempted to appeal the seven violations but these efforts were denied as they did not timely submit the appeal.

Plaintiffs blame defendants Ko, Kuo, Lee, Kang and Yu, who they claim they hired to submit building permit applications to the City of New York for the construction of a super's apartment inside the property. Plaintiffs insist that these defendants falsely represented that all of them were licensed professionals when, in fact, they were not. They argue that these defendants used a defunct corporation (defendant Symuse) to submit work requests to the City. Plaintiffs claim the City was part of this fraudulent scheme. Plaintiffs then complain about the stop work order issued by the City in March 2016 and claim defendants knew the assertions that served as the basis for this order were false.

As an initial matter, the Court grants the branch of the motion that seeks a default judgment against defendants Christopher Ko, Yong Soon Ko, Cassie Kuo, Sung Hung Lee, Inkook Kang, Youngsam Yu and Symuse, Inc. on default.

However, the Court declines the branch of the motion that seeks to vacate the Court's order dismissing the case against defendant the City of New York; the City's motion was granted without opposition on September 22, 2021 (NYSCEF Doc. No. 73). The Court's decision was uploaded on 9:20 a.m. on that date and *nine* minutes later counsel for plaintiffs uploaded a letter claiming that she "had a COVID scare in my family" and forgot to request an adjournment by counsel (NYSCEF Doc. No. 74). She asked the Court to *sua sponte* vacate the decision. When the Court declined to grant this improper request, plaintiffs waited (for some reason) until December 29, 2021 to make the instant motion to vacate this decision.

In support of the motion, counsel for plaintiffs asserts that the reasonable excuse for not opposing the City's motion is that her family had a Covid scare. The Court is utterly baffled by this excuse. Counsel for plaintiffs attaches what purports to be Covid test results that show that she, her husband and child all tested *negative* for Covid (NYSCEF Doc. No. 83, exh G). Counsel for plaintiffs claims that she was sick with Covid-like symptoms, lost track of dates and dealt with the "stress of possibly having Covid-19" (NYSCEF Doc. No. 78, ¶ 13).

The problem for this Court is that the negative tests submitted show they were taken on September 13, 2021 and reported on September 14, 2021 (well before the return date for motion sequence 002 on September 21, 2021). To be clear, the Court recognizes that people get sick and sometimes miss deadlines. That can possibly serve as a reasonable excuse under the right circumstances. But, here, counsel for plaintiffs makes multiple references to Covid and its effects on the population at large despite the fact that she did not test positive during the time period at issue. She received a negative test result the week before the return date and missed the deadline, only to file a letter nine minutes after the Court issued the decision granting the City its requested dismissal. Clearly, counsel for plaintiffs was not so sick that she was unable to read her email and immediately draft a letter about it.

Moreover, this is not a case where plaintiffs uploaded a late opposition or moved immediately (ideally via order to show cause) to correct this oversight. Again, the Court recognizes that mistakes happen. But counsel for plaintiffs waited more than three months, until December 29, 2021, to seek the instant relief and there is no adequate explanation for that delay.

Even if the Court could overlook plaintiffs' confusing "reasonable" excuse, the Court is unable to find that plaintiffs stated a meritorious case against the City. As best this Court can tell, plaintiffs are unhappy with an administrative hearing in which they were fined for doing

work at the premises in defiance of a stop work order and outside the scope of a permit. While they are understandably upset with the defendants they hired to do the work (who allegedly should have had the proper licenses and expertise), that does not justify bringing a case against the City. According to the City's papers filed in support of the motion to dismiss (MS002), plaintiffs filed an appeal of this fine with OATH but the appeal was denied as untimely.

Plaintiffs' unhappiness with the administrative hearing does not permit them to bring a plenary action that seeks damages against the City. There is no evidence that plaintiffs filed a notice of claim as required when bringing a tort claim against the City. In other words, plaintiffs failed to state a cognizable cause of action against the City. Plaintiffs' attempt to argue there was some sort of broad conspiracy involving the City is not supported with enough detail (CPLR 3016[b]). Instead, plaintiffs only offer a vague theory that the City knew about the alleged misconduct.

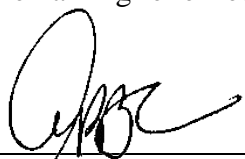
Moreover, plaintiffs admit that "The City's actions against Irason were and are solely the consequence of Mr. Ko's multiple acts of misrepresentation to the plaintiffs" (NYSCEF Doc. No. 78, ¶ 35). If that assertion by plaintiffs is true, then how does that state a claim against the City?

Plaintiffs also seek in their notice of motion to sever the action against the City; that request is denied as the Court declines to vacate the order dismissing the case against this defendant. Plaintiffs also demand that the Court remove defendants Barylski and Engineering and Land Surveying, P.C. from the caption. The Court observes that these defendants were not included in the captions for the summons, the complaint, the supplemental summons or the amended complaint so the Court sees no reason to grant this relief.

Accordingly, it is hereby

ORDERED that the motion by plaintiffs is granted on default to the extent they sought a default judgment against defendants Christopher Ko, Yong Soon Ko, Cassie Kuo, Sung Hung Lee, Inkook Kang, Youngsam Yu and Symuse, Inc. and plaintiff is directed to file a note of issue for an inquest on or before January 21, 2022 and denied as to the remaining relief requested.

1/12/2022
DATE


ARLENE BLUTH, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					REFERENCE