

West Side Invs. LLC v Wee
2022 NY Slip Op 30594(U)
February 17, 2022
Civil Court of the City of New York, Queens County
Docket Number: Index No. L&T 67721/2019
Judge: Clinton J. Guthrie
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART E

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WEST SIDE INVESTORS LLC,

Petitioner,

Index No. L&T 67721/19

-against-

DECISION/ORDER

BEVERLY M WEE, JOHN DOE, JANE DOE,

Respondents.

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Present:

Hon. CLINTON J. GUTHRIE
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of petitioner’s motion for a hearing and related relief and respondent Beverly Wee’s (cross) motion to vacate the judgment, to vacate or to stay the warrant of eviction, and other relief:

Papers	Numbered
Notice of Motion & Affidavit/Exhibits Annexed.....	<u>1 (NYSCEF #4-7)</u>
Notice of (Cross) Motion & Affirmation/Exhibits Annexed.....	<u>2 (NYSCEF #10-13)</u>
Affirmation in Opposition.....	<u>3 (NYSCEF #14)</u>

Upon the foregoing cited papers, the decision and order on petitioner’s motion and respondent’s (cross) motion (consolidated for determination herein) is as follows.

PROCEDURAL HISTORY

This post-foreclosure holdover proceeding was commenced in September 2019. Following two (2) court dates where respondents failed to appear, the proceeding was scheduled for inquest. On December 12, 2019, respondents failed to appear and the court (Sergio Jimenez, J.) conducted

an inquest. After inquest, a judgment of possession was granted against all respondents. An amended judgment was issued on February 11, 2020 and a warrant reissued on February 13, 2020. Before execution could occur, all eviction proceedings were suspended as a result of the COVID-19 public health emergency (*see* Administrative Order (AO) 68/20).

Following the resumption of eviction proceedings and the enactment of L 2021, ch 417, petitioner made a motion for a hearing and related relief, as required to enforce a judgment issued on default (*see* L 2021, ch 417, Part C, Subpart A, Sec. 5). The motion appeared in the HMP Part on September 29, 2021. Respondent Beverly Wee (hereinafter “respondent”) was referred to The Legal Aid Society and the proceeding was adjourned to Part E on October 27, 2021. Following additional adjournments for motion practice (respondent filed a cross motion to vacate the default judgment, to vacate or stay the warrant, and for other relief in the interim), the court heard argument on both motions on January 26, 2022 (via Teams) and reserved decision on the motions.

DISCUSSION

I. Petitioner’s motion for a hearing.

Petitioner’s motion seeks a hearing. Although not stated in petitioner’s motion, the hearing was a requirement for enforcement of a default judgment under L 2021, ch 417, Part C, Subpart A, Sec. 5. The judgment here was granted on default after inquest. At the time of argument on petitioner’s motion, however, the hearing requirement was no longer in effect, as the relevant law expired on January 15, 2022. *See* L 2021, ch 417, Part C, Subpart A, Sec. 11. Therefore, the request for a hearing is now moot. However, the court considers the motion to be one for execution of a pre-COVID warrant and subject to the motion and conference requirements in DRP-217, DRP-221, and Administrative Order 245/21. However, since the issue of execution of the warrant would

be rendered moot if the primary relief sought in the cross motion (vacatur of the judgment and warrant) is granted, the court will address the cross motion before making a final determination on enforcement. *See e.g. Datta v. Terrapin Indus., LLC*, 2011 NY Slip Op 33562[U] [Sup Ct, Queens County 2011].

II. Respondent's cross motion to vacate the judgment and to vacate or stay the warrant.

Respondent's cross motion first seeks vacatur of the default judgment. The request is made, in effect, pursuant to DRP-219, which was issued by Administrative Judge Carolyn Walker-Diallo on November 23, 2021. The DRP specifically references L 2021, ch 417, Part C, [Subpart A], Section 5, and states in a note at the conclusion that "[u]pon request by a respondent, default judgments issued prior to December 28, 2020 and between August 13, 2021 and September 2, 2021 must be vacated or 'removed' and restored to the calendar." While the DRP is not itself law, the statute that it references includes this specific directive:

"If a default judgment has been awarded at any time prior to the effective date of chapter 381 of the laws of 2020 [December 28, 2020], including in eviction proceedings filed on or before March 7, 2020, or between August 13, 2021 and the effective date of this act [September 2, 2021], the default judgment shall be vacated, regardless of any court proceedings that occurred subsequent to entry of the default judgment and the matter restored to the court calendar upon the respondent's written or oral request to the court either before or during such hearing and an order to show cause to vacate the default judgment shall not be required."
L 2021, ch 417, Part C, Subpart A, Sec. 5.

Here, respondent, through counsel, has made a written request to vacate a default judgment granted prior to December 28, 2020, in a proceeding commenced before March 7, 2020. Therefore, the statute unequivocally applies to the present circumstances. Petitioner's opposition highlights the fact that respondent filed an affidavit of unavailability before a court date prior to the inquest was taken, and that consequently this demonstrates respondent's notice of the proceeding.

Petitioner also encourages the court to consider the injustice of vacating the judgment at this juncture, over two (2) years after it was entered and when substantial use and occupancy arrears have accrued.

To petitioner's first point, the statute only references default judgments. While respondent filed an affidavit of unavailability prior to a court date predating the inquest, the fact remains that the judgment itself was entered on default, after an inquest. To the second point, while the court is sympathetic to the factors raised by petitioner, the legislature amended the previous versions of the statute included in L 2020, ch 381 (COVID-19 Emergency Eviction and Foreclosure Prevention Act) and L 2021, ch 104, to specifically add the "regardless of any court proceedings that occurred subsequent to entry of the default judgment" language in L 2021, ch 417. This amendment clearly signifies an intent of the legislature to direct vacatur of default judgments granted within the relevant timeframe, notwithstanding any subsequent proceedings or the passage of time. *See Roberts v. Tishman Speyer Props., L.P.*, 13 NY2d 270, 286 [2009] ["When construing a statute, we seek to discern and give effect to the Legislature's intent, and the starting point for accomplishing this is the statute's language."] [Internal citations omitted]. Moreover, for this court to take equitable factors into consideration when the statute is unambiguous would be to "give effect to an assumed legislative intent by judicial construction." *Kimmel v. State of New York*, 29 NY3d 386, 394 [2017].

Finally, while the relevant default judgment provision of L 2021, ch 417 expired on January 15, 2022 (*see* L 2021, ch 417, Part C, Subpart A, Sec. 11), General Construction Law § 93 provides that:

"The repeal of any statute or part thereof shall not affect any...right accruing, accrued

or acquired...prior to the time such repeal takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if such repeal had not been effected.”

The Court of Appeals has interpreted General Construction Law § 93 to permit enforcement of rights accrued and actions taken under an emergency rent control law after it expired. *See 850 Co. v. Schwartz*, 15 NY2d 899, 901 [1965]. Here, respondent (through counsel), made a timely request for relief while the relevant statute was in effect. Notwithstanding the fact that the disposition occurs after the expiration of that that statute, the required action (written request for vacatur of a default judgment) occurred while it was in effect and the right that was sought was available thereunder. Accordingly, vacatur of the default judgment granted against respondent after inquest pursuant to L 2021, ch 417, Part C, Subpart A, Sec. 5, after the expiration of the statute, is sanctioned by General Construction Law § 93.

For each of these reasons, respondent’s cross motion is granted to the extent that the default judgment issued against Beverly M Wee is vacated. Since a warrant in a summary eviction proceeding is dependent on the rendering of a judgment (*see* RPAPL § 749(1)), the court vacates the warrant granted pursuant to default judgment as well. Petitioner’s default judgment against John Doe and Jane Doe stands; however, since a single warrant was granted against all respondents, a new warrant must issue against John Doe and Jane Doe. Execution of any warrant against John Doe and Jane Doe shall be stayed pending final disposition as against respondent Wee.


CONCLUSION

Based on the foregoing determinations, petitioner’s motion is denied as moot. Respondent’s cross motion is granted to the extent that the amended default judgment (dated February 11, 2020) against Beverly M Wee is vacated and the reissued warrant of eviction (dated February 13, 2020) is

vacated. A new warrant of eviction shall issue against John Doe and Jane Doe, provided, however, that execution of said warrant shall be stayed pending a final disposition as against respondent Wee. Respondent Wee shall serve an answer on or before March 11, 2022. This proceeding will be restored for all purposes, including trial, in Part E, Room 404, on March 25, 2022 at 10:30 AM. This Decision/order will be filed to NYSCEF.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: Queens, New York
February 17, 2022



HON. CLINTON J. GUTHRIE, J.H.C.

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SO ORDERED - HON. CLINTON J. GUTHRIE

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