

Non-Marital Trust Under Art. VI of Melvin Last Revocable Trust U/A/D July 2, 2007 v A Class Realty
2022 NY Slip Op 31112(U)
February 28, 2022
Supreme Court, Queens County
Docket Number: Index No. 701661/19
Judge: Allan B. Weiss
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE ALLAN B. WEISS
Justice

IAS Part 2

NON-MARITAL TRUST UNDER ARTICLE VI OF
MELVIN LAST REVOCABLE TRUST U/A/D
JULY 2, 2007, CAROL LAST, TRUSTEE,

Index No. 701661/19

Motion Date: 10/27/21

Plaintiff,

Motion Seq. No. 2

-against-

A CLASS REALTY a/k/a A CLASS REALTY
INTERNATIONAL A/K/A CLASS REALTY INT.,
CORP., ANTONIO MAZZARA, ANTHOANE
PERALTA,

Defendants.

FILED

2/28/2022

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**COUNTY CLERK
QUEENS COUNTY**

The following numbered papers were read on this motion by defendants Antonio Mazzara and Anthoane Peralta (moving defendants) pursuant to CPLR 5015 (a)(1) seeking to vacate an order dated December 21, 2020 and judgment dated January 5, 2021, and upon vacatur, an order granting them summary judgment, pursuant to CPLR 3212; and cross motion by plaintiff seeking an amendment of the caption and judgment to reflect that Antonio Mazzara is also known as Antonino Mazzara.

Papers
Numbered

Notice of Motion - Affidavits - Exhibits..... 52-70
Notice of Cross Motion - Affidavits - Exhibits.. 71-91
Answering Affidavits - Exhibits..... 92-93

Upon the foregoing papers it is ordered that the motion and cross motion are determined as follows:

Plaintiff commenced this action to recover unpaid rent pursuant to a commercial lease for premises known as 30-77 Steinway Street, Astoria, New York. The lease agreement was between plaintiff's management agent LC Realty Co. (LC) and A

Class Realty Corp. a/k/a A Class Realty International a/k/a A Class Realty Int., Corp. (A Class) and was personally guaranteed by moving defendants. The lease was for an eight year period from December 1, 2015 through November 30, 2023. The premises were surrendered on July 30, 2018 by delivering the keys to plaintiff.

The action was commenced by filing a summons and complaint on January 29, 2019. Plaintiff alleges that based on A Class's default under the lease, it seeks to recover rent for the months of March 2017, June 2018 through November 2018, December 2018 through August 2019, as well as additional rent, liquidated damages, attorneys' fees and interest. Moving defendants initially appeared pro-se and answered the complaint on April 17, 2019. Subsequently, amended answers dated May 16, 2019 and June 3, 2019 were asserted on behalf of all defendants by attorney Arthur G. Trakas (Trakas).

Pursuant to Rider II of the lease, dated December 1, 2015, the moving defendants agreed:

"to be personal liable for full payment of rent for the term of the Lease or until the keys and premises are surrendered, whichever come first. Keys and premises may only be surrendered by the Tenant with ninety (90) days' written notice to the Landlord. However, in the event that the Tenant breaks the Lease, Tenant forfeits the full amount in security."

By order dated December 21, 2020, the court granted plaintiff's application for summary judgment without opposition. Judgment in the amount of \$206,060.27 was entered against all defendants on January 5, 2021.

Moving defendants currently seek to vacate the aforesaid order and judgment of the court granting summary judgment to the plaintiff pursuant to CPLR 5015 (a)(1), and upon vacatur, awarding summary judgment in their favor. Moving defendants contend that they have a reasonable excuse as well as a meritorious defense to the action. They attribute the failure to oppose the motion for summary judgment on the "law office failure" of their former counsel to advise them of the summary judgment motion¹. Also, they contend that as defendants complied with the provisions of the guarantee by surrendering the premises

¹ A Consent to Change Attorney was executed by defendants and Trakas on August 31, 2020, substituting themselves as "Defendants Pro Se" in place of Trakas.

and keys pursuant to a ninety day written notice², they are relieved of any personal liability pursuant to the lease. They deny receipt of an uncured notice of a default prior to surrendering the premises.

In opposition, plaintiff contends that moving defendants lack a reasonable excuse for the default as they were aware of the summary judgment motion. Upon being advised by Trakas that he was no longer representing defendants³, plaintiff reached out to defendants directly. In support, plaintiff submits, inter alia, copy of correspondence sent to defendants and Trakas on October 27, 2020 advising them that the motion for summary judgment had been adjourned to December 9, 2020. Said correspondence was served by FedEx and accompanied by proof of delivery, indicating that someone had signed for them. Also plaintiff submits copy of emails sent to answering defendant at tony.mazzara@classrealty.com and Trakas on October 26, 2020, advising that the motion for summary judgment was returnable and no opposition had been submitted and on December 8, 2020, advising that the motion was adjourned to December 9, 2020. Furthermore, plaintiff maintains that moving defendants lack a meritorious defense as A Class' surrender of the property on July 30, 2018 was less than ninety days from its May 22, 2018 ninety day notice. In support, plaintiff submits a ninety day notice dated May 22, 2018, signed by moving defendant Anthoane Peralta on behalf of A Class and its attorney.

Pursuant to CPLR 5015: Relief from judgment or order:

"(a) On motion. 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".

² There are two ninety day notices at issue. Moving defendants seek to rely on a ninety day notice dated May 1, 2018 but there is also a ninety day notice dated May 22, 2018 on which plaintiff relies.

³ Trakas advised plaintiff's attorney and the court by email dated September 1, 2020 that he was relieved as counsel by defendants, who would be representing themselves going forward, and requested an adjournment so that the defendants could oppose the motion.

It is well settled that to vacate an order or judgment entered upon default, the moving party is obligated to establish both a reasonable excuse for the default and the existence of a potentially meritorious defense to the action. (See *Eugene Di Lorenzo, Inc. v A.C. Dutton Lbr. Co.*, 67 NY2d 138 [1986]; *Rochdale Ins. Co. v Fairview Nursing Care Ctr., Inc.*, 186 AD3d 1425 [2020]; *Kaung Hea Lee v 354 Mgt., Inc.*, 166 AD3d 747 [2d Dept 2018].) The determination of what constitutes a reasonable excuse is left to the sound discretion of the court. (See *U.S. Bank, N.A. v Essaghof*, 178 AD3d 876 [2d Dept 2019]; *Nationstar Mortg., LLC v Ramnarine*, 172 AD3d 886 [2d Dept 2019].)

Although, the claim of law office failure can be accepted by the court as a reasonable excuse, a conclusory, undetailed and uncorroborated claim of law office failure does not amount to a reasonable excuse. (See *Wilmington Sav. Fund Socy., FSB v Rodriguez*, 197 AD3d 784 [2d Dept 2021]; *Bank of N.Y. Mellon Trust Co., N.A. v Talukder*, 176 AD3d 772 [2d Dept 2019]; *Eastern Sav. Bank, FSB v Charles*, 103 AD3d 683 [2d Dept 2013].) Furthermore, a party attributing their default to a prior attorney must provide a detailed and credible explanation of the default. (See *Torres v Rely On Us, Inc.*, 165 AD3d 731 [2d Dept 2018]; *U.S. Bank N.A. v Barr*, 139 AD3d 937 [2d Dept 2016].)

Here, moving defendants fail to establish a reasonable excuse for their default. Their uncorroborated allegation that the failure to oppose the summary judgment motion was due to their former counsel's failure to apprise them of plaintiff's motion is not credible. (See *Wells Fargo Bank, N.A. v. Singh*, 196 AD3d 728 [2d Dept 2021]; *Nationstar Mortg., LLC v Ramnarine*, 172 AD3d 886 [2d Dept 2019]; *LaSalle Bank, N.A. v LoRusso*, 155 AD3d 706 [2d Dept 2017]; *U.S. Bank Natl. Assn. v Barr*, 139 AD3d 937 [2d Dept 2016].) Moving defendants' unsubstantiated and conclusory allegations do not establish a reasonable excuse for their default. (See *Wilmington Sav. Fund Socy., FSB*, 197 AD3d 784; *Nationstar Mortg.*, 172 AD3d 886; *LaSalle Bank, N.A.*, 155 AD3d 706; *U.S. Bank N.A.*, 139 AD3d 937.) In light of the lack of reasonable excuse for their default, it is unnecessary to determine whether defendants have a potentially meritorious defense to the action. (See *Nationstar Mortg., LLC*, 172 AD3d 710; *Torres*, 165 AD3d 731; *La Salle Bank, N.A.*, 155 AD3d 706; *U.S. Bank Natl. Assn.*, 139 AD3d 937.)

Plaintiff's cross motion seeking an amendment of the caption and judgment to reflect that Antonio Mazzara is also known as Antonino Mazzara is granted. (See CPLR 2001 and 5019(a).)

Accordingly, it is

ORDERED, that the motion is denied; and it is further

ORDERED, that the cross motion seeking to amend the caption and judgment, to reflect that Antonio Mazzara is also known as Antonino Mazzara is granted; and it is further

ORDERED, that the caption shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
QUEENS COUNTY

-----X

NON-EXEMPT MARITAL TRUST UNDER ARTICLE VI
OF MELVIN LAST REVOCABLE TRUST U/A/D JULY
2, 2007, CAROL LAST, TRUSTEE,

Plaintiff

Index No. 701661/2019

-against-

A CLASS REALTY CORP. a/k/a A CLASS REALTY
INTERNATIONAL a/k/a A CLASS REALTY INT.,
CORP., ANTONIO MAZZARA a/k/a ANTONINO
MAZZARA, ANTHOANE PERALTA,

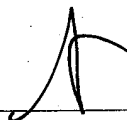
Defendant(s)

-----X.

and it is further

ORDERED, that Antonio Mazzara's name be amended throughout the judgment to reflect that he is also known as Antonino Mazzara (Antonio Mazzara a/k/a Antonino Mazzara).

Dated: February 28, 2022



J.S.C.

FILED

**2/28/2022
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**COUNTY CLERK
QUEENS COUNTY**

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