

Namdar E. 106 LLC v Manna House Workshops, Inc.
2022 NY Slip Op 31458(U)
May 4, 2022
Supreme Court, New York County
Docket Number: Index No. 153157/2020
Judge: Sabrina Kraus
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS **PART** **57TR**

Justice

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NAMDAR EAST 106 LLC, 338 E 106 BH LLC,

Plaintiff,

- v -

MANNA HOUSE WORKSHOPS, INC., A & A EAST 106
LLC, AVI ISHTA

Defendant.

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INDEX NO. 153157/2020

MOTION DATE 04/14/2022

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 103

were read on this motion to/for

VACATE DEFAULT

BACKGROUND

Manna House Workshops, Inc. ("MHW"), is a not for profit corporation, and owns the property located at 338 East 106th Street, New York, New York . By Contract of Sale dated September 11, 2019, MHW agreed to sell the Property to Klosed Properties, Inc. ("KPI").

In March, 2020, KPI learned that a Notice of Memorandum of Contract dated February 26, 2020 was filed on New York City's Automated City Register Information System ("ACRIS") reflecting A & A East 106, LLC as Purchaser, and MHW, as Seller. The Contract of sale referenced in the Notice of Memorandum was purportedly between A & A East, as Purchaser, and MHW, as Seller, and was dated February 26, 2020.

This litigation ensued to determine the parties' rights and remedies pursuant to the contract of sale and in regard to the property.

On January 15, 2021, the court (Kelly, J) granted plaintiff's motion for a default

judgment as to A & A East 106 LLC (East 106) and Avi Ishta (Ishta). On February 10, 2020, the court amended its' order to provide for additional relief as against the defaulting defendants.

PENDING MOTION

On March 28, 2022, East 106 and Ishta moved for an order vacating the default judgment, dismissing the action for lack of personal jurisdiction, and for leave to file an answer.

On April 14, 2022, the motion was fully briefed and referred to this court for determination.

The motion seeking to vacate the default judgment and dismiss the action as to Ishta is granted on consent.

The motion of East 106 to vacate its default and for leave to file an answer is granted for the reasons set forth below.

DISCUSSION

Pursuant to CPLR §5015(a)(4) a party may move to vacate a default judgment within one year after service of a copy of the judgment with notice of entry, upon a showing of excusable default and an alleged meritorious defense.

The determination of what constitutes a reasonable excuse for a default lies within the sound discretion of the Supreme Court. (*see Antoine v. Bee*, 26 AD3d 306 [2006]; *Matter of Hye-Young Chon v Country-Wide Ins. Co.*, 22 AD3d 849 [2005]). In making said determination the court will consider the extent of the delay, prejudice to the opposing party, whether there has been willfulness, and the preference in favor of resolving cases on the merits (*Thompson v. Steuben Realty Corp.*, 18 AD3d 864; *65 North 8 Street HDFC v. Suarez*, 18 AD3d 732).

"... (W)here, there is no evidence of willfulness, deliberate default, or prejudice the interest of justice is best served by permitting the case to be decided on its merits" (*Beizer v. Funk*, 5 AD3d 619, 620; *Scielzi v. Gold*, 213 A.D.2d 872; *Orwell Bldg. Corp. v. Bessaha*, 5 AD3d 573).

East 106th has met its burden in this regard. At the outset there is no allegation or proof that defendant was served with notice of entry of the court's February 10, 2020 decision. Additionally, there was a toll from March through November 2020 due to the pandemic. As such the motion is timely.

East 106th explains why it did not receive the papers that were served on the Secretary of State thereby establishing an excusable default. Additionally, it has in its proposed answer asserted what it alleges to be meritorious defenses and claims as to which of the two contracts of sale was in fact valid.

Finally, this case is still in its initial stages and the court finds that the preference for determining cases on their merits outweighs any alleged prejudice suffered by plaintiff as a result of vacating the default.

CONCLUSION

WHEREFORE it is hereby:

ORDERED that defendants' motion to vacate its default herein is granted and the default judgment entered pursuant to Judge Kelly's February 10, 2020 order is hereby vacated; and it is further

ORDERED that the action is dismissed as to Avi Ishta and the clerk is directed to enter judgment accordingly and remove his name from the caption; and it is further

