

214 W. 39th St., LLC v New Era Brands, LLC

2022 NY Slip Op 32266(U)

July 13, 2022

Supreme Court, New York County

Docket Number: Index No. 150457/2018

Judge: Arlene Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE BLUTH PART 14

Justice

-----X

214 WEST 39TH STREET, LLC,

Plaintiff,

- v -

NEW ERA BRANDS, LLC, VICTOR KAMEO

Defendants.

-----X

INDEX NO. 150457/2018

MOTION DATE N/A

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 128, 129, 130, 131, 132, 133, 134, 135, 136, 138, 139, 140, 141, 142, 143, 144, 145, 146

were read on this motion to/for VACATE - JUDGMENT.

The motion by defendant Kameo to vacate the judgment entered against him and the note of issue is granted only upon the condition that this defendant must post a bond for the full amount of the judgment on or before August 12, 2022. If no bond is posted, then the judgment stands in full force.

Background

In April 2020, the judge previously assigned to this matter granted plaintiff's motion for partial summary judgment (NYSCEF Doc. No. 105). This action involves a breach of a lease and related guaranty (signed by defendant Kameo). The judge found that there were issues of fact with respect to damages under both the lease and the guaranty (*id.*). That motion was fully briefed and defendants offered opposition.

Counsel for defendants then submitted a letter dated January 4, 2021 in which he claimed that the “Defendants have discontinued our representation” and that the firm was “no longer representing nor authorized to represent or appear on behalf of the Defendants” (NYSCEF Doc. No. 115). The Court then held multiple telephone conferences at which defendants failed to appear before ordering that plaintiff file a note of issue for a trial on damages (NYSCEF Doc. No. 116).

The Court then conducted the trial on June 16, 2021 and defendants, once again, did not appear (NYSCEF Doc. No. 124). Plaintiff later obtained a judgment against both defendants for \$260,478.83.

Now, defendant Kameo complains that his attorney withdrew without obtaining leave of Court and defendants were left without any representation. He claims that he did not receive proper notice of the inquest and that there should be more discovery about the potential surrender of the premises (an issue highlighted in the summary judgment decision rendered by the judge previously assigned to this case).

In opposition, plaintiff contends that Kameo fired his previous attorney and so there is no excuse for his subsequent non-appearance. It argues that it was Kameo’s responsibility to hire new counsel if he fired his previous attorney. Plaintiff also claims that the note of issue was properly served on Kameo at the address used to effectuate service of the summons and complaint. Plaintiff also argues that Kameo is unequivocally liable to pay the full amount of the judgment because the tenant (the other defendant) was already in default at the time of the alleged surrender and Kameo did not show that the lease was terminated with the surrender of possession.

Discussion

The Court grants the motion upon the condition stated above. As an initial matter, the Court observes that Kameo claims (in his affidavit) that his attorney unilaterally withdrew as his attorney (NYSCEF Doc. No. 134, ¶ 7). Of course, an attorney is not entitled to unilaterally terminate his or her representation (*see* CPLR 321[b]). There was no supporting evidence attached to the letter from Kameo's previous counsel that Kameo fired his attorney and now Kameo insists it was a unilateral withdrawal. And plaintiff only offers speculation that Kameo's previous counsel was fired. That compels the Court to grant the motion; a party should have a full and fair opportunity to argue his or her case. This Court prefers to decide cases on their merits, especially where it appears that an attorney's withdrawal did not comport with the CPLR. Under these circumstances, it is simply fairer to let Kameo's case be decided on the merits rather than relegate him to a malpractice case against his former attorneys.

Plus, Kameo raised a legitimate issue to explore—the extent of plaintiff's damages under the terms of the guaranty. This is an issue that the judge initially assigned to this case highlighted and one that requires more discovery. Therefore, the Court vacates the judgment against defendant Kameo only and vacates the note of issue but only with the conditions stated.

The condition of posting a bond is fair. Given the fact that plaintiff obtained summary judgment against defendant Kameo on the merits while he was represented by counsel and the only issue is how much he owes, the Court finds that he must post a bond for the full amount of the judgment on or before August 12, 2022. Plaintiff pointed out in opposition that the corporate entity (the tenant) is listed as inactive with the Secretary of State (NYSCEF Doc. No. 146) and plaintiff insists this entity is dissolved. Plaintiff also correctly points out that only defendant Kameo seeks to vacate the judgment despite the fact that Kameo represented that he was the

100% owner of the equity interests in the co-defendant. In other words, a bond is appropriate given that Kameo ignored (or forgot) about this case and the co-defendant purportedly has no assets. Once the bond is posted, the parties may submit a stipulation to vacate the judgment and note of issue and the matter will be scheduled for a discovery conference. Of course, proper proof of the bond must be produced.

Accordingly, it is hereby


ORDERED that the motion by defendant Kameo to vacate the judgment against him only and to vacate the note of issue is granted provided that he post a bond for the full amount of the judgment (\$260,478.83) on or before August 12, 2022; and it is further

ORDERED that, within 15 days from the entry of a so-ordered stipulation with proof of the bond, movant shall serve a copy of this order with notice of entry *and the so-ordered stipulation* on all parties and upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is hereby directed to strike the case from the trial calendar and make all required notations thereof in the records of the court and immediately restore this action to the active calendar; and it is further

ORDERED that such upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

If the bond is posted and the action is thereafter restored, then the Court will schedule a conference for November 14, 2022 at 11:30 a.m. The parties are directed to provide a discovery

update via e-filing by November 7, 2022 or that conference will be adjourned. That update can be 1) a stipulation signed by all sides, 2) a stipulation of partial agreement or 3) letters indicating why the parties are unable to reach an agreement. This should be more than enough time for the parties to complete the remaining discovery given that plaintiff has already obtained summary judgment and the only issue remaining is damages.

<p><u>7/13/2022</u> DATE</p>	 <hr/> ARLENE BLUTH, J.S.C.	
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE