

Our Lady of the Rosary Realty, LLC v Dacy
2022 NY Slip Op 32725(U)
August 12, 2022
Supreme Court, New York County
Docket Number: Index No. 159043/2020
Judge: John J. Kelley
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOHN J. KELLEY **PART** **56M**

Justice

-----X

OUR LADY OF THE ROSARY REALTY, LLC,

Plaintiff,

- v -

DOUGLAS DACY, CLYNT A. LEVY, also known as
CLYNTPELL ALLEN, also known as CLINT ALLEN LEVY,
JOHN DOE, and JANE DOE,

Defendants.

-----X

INDEX NO. 159043/2020

MOTION DATE 07/01/2022

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38

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

In this action for ejectment and to recover either unpaid rent or use and occupancy in connection with residential property located at 676 Riverside Drive, Apt. 3D, in Manhattan (the premises), the defendant Clynt A. Levy, also known as Clyntell Allen, also known as Clint Allen Levy (hereinafter Levy), moves pursuant to CPLR 5015(a)(1) to vacate a judgment of ejectment dated February 1, 2022, and entered against him on February 8, 2022, and a money judgment in the total sum of \$88,069.56, entered against him on February 8, 2022. The plaintiff opposes the motion. The motion is denied. The court notes, however, that the enforcement of the provision of the first February 8, 2022 judgment directing Levy's ejectment from the premises is stayed until January 11, 2023, in accordance with this court's August 12, 2022 order disposing of Levy's motion under Motion Sequence 004.

By decision, order, and judgment of ejectment dated February 1, 2022, this court determined that Levy failed to appear for a compliance and settlement conference on February 1, 2022, at 11:00 a.m., held him in default, struck his answer, and thereupon granted judgment in the plaintiff's favor and against him on the cause of action for ejectment. The court also

awarded the plaintiff the sum of \$76,955.00 on its cause of action to recover unpaid rent or use and occupancy, and directed the Clerk of the court to enter a money judgment in favor of the plaintiff and against Levy in that sum, plus statutory prejudgment interest at the rate of 9% per annum from August 15, 2020. The Clerk entered the judgment of ejectment on February 8, 2022, and entered a separate money judgment on that date as well.

On March 2, 2022, Levy made the instant motion to vacate the judgment (see CPLR 2211), arguing that he was a tenant of record and not a mere occupant of the premises, as asserted by the plaintiff. Levy also asserted that he was the victim of a rent overcharge, a claim that the court had previously rejected, and that he had not properly been credited for certain payments that he had tendered. He further asserted that he had applied for and was granted benefits in the sum of \$55,125.00 pursuant to the Emergency Rental Assistance Program (L 2021, ch 156, part BB; hereinafter ERAP), and that those benefits had been paid directly to the plaintiff. On March 29, 2022, Levy moved, under Motion Sequence 004, to stay the enforcement of the judgments. In the March 28, 2022 order to show cause initiating Motion Sequence 004, the court granted Levy's request for a temporary restraining order staying enforcement of the judgments, pending disposition of the instant motion to vacate those judgments. The plaintiff opposed the instant motion, asserting that it had never recognized Levy as a tenant of record, and that, notwithstanding its acceptance of the ERAP payments, Levy still owed significant amounts of back use and occupancy and, hence, he failed to establish a potentially meritorious defense to the action.

The court adjourned both this motion and the motion under Sequence 004 several times to mediate the dispute and permit the parties reach a resolution. Despite meeting with the parties remotely on April 20, 2022, May 23, 2022, and June 16, 2022, the court or its representatives could not successfully mediate the dispute. At the last conference, the court informed the parties that, if they could not successfully reach a resolution, this motion and

Motion Sequence 004 would be deemed fully submitted as of July 1, 2022. The parties have not settled the action since that date.

CPLR 5015(a)(1) provides that

“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 . . . 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.”

“A party seeking relief from an order or judgment on the basis of excusable default pursuant to CPLR 5015(a)(1) must provide a reasonable excuse for the failure to appear and demonstrate the merit of the cause of action or defense” (*Goldman v Cotter*, 10 AD3d 289, 291 [1st Dept 2004]; see *Eugene Di Lorenzo, Inc. v A.C. Dutton Lumber Co.*, 67 NY2d 138, 141 [1986]; *Navarro v A. Trenkman Estate, Inc.*, 279 AD2d 257, 258 [1st Dept 2001]; *Mediavilla v Gurman*, 272 AD2d 146, 148 [1st Dept 2000]). “The determination of the sufficiency of the proffered excuse and the statement of merits rests within the sound discretion of the court” (*Goldman v Cotter*, 10 AD3d at 291; see *Navarro v A. Trenkman Estate, Inc.*, 279 AD2d at 258).

In his motion papers, Levy set forth no reason for his failure to appear at the February 1, 2022 conference and, hence, has failed to provide a “reasonable excuse” for his default. This motion may thus be denied on that ground alone. In any event, he also failed to demonstrate the potential merit of his defense to the action. Even if the court were to accept his contention that the Civil Court, New York County, in a proceeding entitled *Matter of Our Lady of the Rosary, LLC v Dacy* (L&T Index No. 65458/2019), directed the plaintiff to add him to the subject lease as a tenant, and that he became a tenant by operation of law, he has failed to demonstrate that he has a potentially meritorious defense to the action. Upon reviewing his payment history, the court concludes that the plaintiff properly credited him for all of the payments that he actually made and that, even after the \$55,125.00 in ERAP benefits were credited to him, he is still in arrears in the sum of \$76,955.00. The mere hope that Levy might

be able to secure that amount in the future through a New York City Department of Social Services/Human Resources Administration Emergency Rental Assistance Grant, commonly known as a "One-Shot Deal," is an insufficient basis upon which to conclude that he has a potentially meritorious defense to nonpayment of rent or use and occupancy.

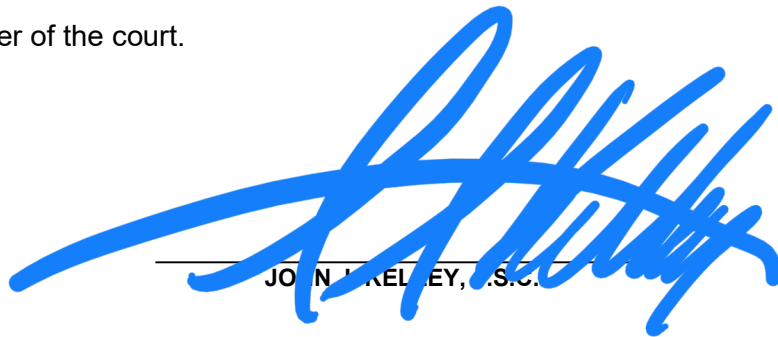
Hence, Levy's motion to vacate the judgments must be denied. Nonetheless, inasmuch as the plaintiff, on January 11, 2022, accepted the sum of \$55,125.00 on Levy's behalf under ERAP, enforcement of so much of the February 8, 2022 judgment as directed Levy's ejectment remains stayed, by operation of law, until January 11, 2023 (see L 2021, ch 156, part BB, § 9[2] [d]; *Park Tower S. Co., LLC v Simons*, 2022 NY Slip Op 22192, *3-4, 2022 NY Misc LEXIS 2706, *8 [Civ Ct, N.Y. County, Jun. 21, 2022]). That stay is reflected in this court's August 12, 2022 order disposing of Motion Sequence 004.

Accordingly, it is

ORDERED that the motion of the defendant Clynt A. Levy, also known as Clyntell Allen, also known as Clint Allen Levy, to vacate the judgment of ejectment entered February 8, 2022 and the money judgment, also entered February 8, 2022, is denied.

This constitutes the Decision and Order of the court.

8/12/2022
DATE


JOHN J. KELLEY, J.S.C.

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