

Lucas v Forlader

2022 NY Slip Op 33747(U)

October 27, 2022

Civil Court of the City of New York, Queens County

Docket Number: Index No. L&T 308904/21

Judge: Clinton J. Guthrie

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART C

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SOPHIA LUCAS,

Index No. L&T 308904/21

Petitioner,

-against-

DECISION/ORDER

CRAIG FORLADER,

Respondent,

NEW YORK CITY DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT,

Respondent.

-----X

Present:

Hon. CLINTON J. GUTHRIE
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of respondent Craig Forlader’s order to show cause to vacate the default judgment and dismiss the petition:

Papers	Numbered
Order to Show Cause & Affirmation/Affidavits/Exhibits Annexed....	<u>1 (NYSCEF #33-38, 40-41)</u>
Affirmation in Opposition & Affidavits/Exhibits Annexed.....	<u>2 (NYSCEF #42-51)</u>

Upon the foregoing cited papers, the decision and order on respondent’s order to show cause is as follows.

PROCEDURAL HISTORY

This HP action for the correction of violations and for a finding of harassment and other relief was commenced by order to show cause in December 2021. On January 12, 2022, Judge

Enedina Pilar Sanchez issued a “Default Order to Restore Heat,” which directed respondent Craig Forlader (hereinafter “respondent”) to restore the heat at the subject premises, as required by the Housing Maintenance Code. The Order referenced a Department of Housing Preservation and Development (DHPD) class “C” violation for lack of heat (Violation #14770795). The Order reserved petitioner’s right to seek civil penalties and the restoration of her harassment claims.

After this court held an inquest upon petitioner’s order to show cause for civil contempt in May 2022, it issued a Decision/Order (dated July 12, 2022) finding that respondent was in contempt of the January 12, 2022 order, imposed civil penalties, made a finding of harassment under the Housing Maintenance Code and granted remedies related thereto, and set the matter down for a hearing on petitioner’s attorneys’ fees. Prior to the scheduled hearing, respondent appeared by counsel and filed the instant order to show cause to vacate the court’s default judgments issued in conjunction with the July 12, 2022 Decision/Order and to dismiss the petition. Following the submission of opposition papers, the court heard argument on the order to show cause on September 23, 2022 and reserved decision.

DISCUSSION

The court will first assess the request to vacate the default judgments, as the separate request for dismissal becomes relevant only upon vacatur of the judgments. *See* CPLR § 411; *Israel v. Da Auto Repairs Corp.*, 57 Misc 3d 158[A]; 2017 NY Slip Op 51667[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2017] [Special proceeding terminates in a judgment]. Respondent primarily seeks relief pursuant to CPLR § 5015(a)(4), which provides for relief from a judgment or order upon the ground of “lack of jurisdiction to render the judgment or order.” If this ground is established, vacatur of the relevant judgment or order, as well as all subsequent orders, is warranted, along with

dismissal for lack of jurisdiction (regardless of whether any other meritorious defense is established). *See McMullen v. Arnone*, 79 AD2d 469 [2d Dept 1981].

Respondent asserts that petitioner failed to properly serve respondent with the initial order to show cause and petition insofar as she resorted to certified mail, return receipt service without “good cause.” Respondent cites to NYC Civil Court Act § 110(m)(1), which provides that “[s]ervice of process shall be made in the manner prescribed for actions or proceedings in this court, except where the manner of such service is provided for in the housing maintenance code of the city of New York, such service may, as an alternative, be made as therein provided.” As this action was brought seeking relief under the Housing Maintenance Code, the Civil Court Act provision cited is relevant. Under NYC Admin. Code § 27-2115(j), “[i]f a tenant seeks an order directing the owner and the department to appear before the court pursuant to subdivision (h) or (i) of this section, the court may allow service of the order by the tenant by certified or registered mail, return receipt requested.”

Here, the court (Sanchez, J.) permitted service of the initial order to show cause and petition by certified mail, return receipt, pursuant to Section 27-2115(j). Respondent argues that petitioner was first required to show “good cause” before resorting to this service. However, this requirement is nowhere in the Housing Maintenance Code. The phrase “good cause shown” appears in NYC Admin. Code § 27-2115(h)(1), which permits a lawful occupant to apply to the housing part for an order directing the owner and DHPD to appear before the court. Such an order “shall be issued at the discretion of the court for good cause shown, and shall be served as the court may direct.” NYC Admin. Code § 27-2115(h)(1). Clearly, the “good cause” requirement applies to the substantive basis for issuing an order to show cause; the service direction is separate. Moreover, in the next

subsection (27-2115(j)), certified mail, return receipt service is explicitly permitted, without a preliminary showing of good cause. *See Matter of Ebanks v. Skyline NYC, LLC*, 70 AD3d 943, 945 [2d Dept 2010] [“Subdivision (j)...must be read as effectively providing the Civil Court with the option of permitting service of a notice of petition or order to show cause in a manner not otherwise provided by subdivision (h) or by any other applicable statutes, but which would nevertheless ensure that an owner actually receives process, namely by authorizing service by the tenant by certified or registered mail[.]”].

Additionally, respondent argues that service was improper because it was made upon an address, 404 Bayview Avenue, Inwood, New York, without identification of a specific unit. Respondent states in his affidavit that the address contains a commercial building with multiple tenants and a common mailbox. Petitioner, in opposition, refers to the deed for the subject premises (petitioner’s Exhibit B), which lists 404 Bayview Avenue, Inwood, New York, as respondent’s address.¹ Insofar as the deed includes the 404 Bayview Avenue address, it was incumbent upon respondent to come forth with evidence beyond a self-serving affidavit to refute the propriety of service at that address. *See e.g. Ellouzi v. Sherman*, 63 Misc 3d 1216[A], 2019 NY Slip Op 50555[U] [Civ Ct, NY County 2019, Stoller, J.]. Notably, respondent does not indicate what, if any, *additional* information should have been included for the address to be complete. Accordingly, respondent has not demonstrated that the court lacks personal jurisdiction over him and the relief requested pursuant to CPLR § 5015(a)(4) is denied.

¹ The opposition papers also include an email, purportedly from Mr. Forlader to the court on April 6, 2022, which includes a signature for Mr. Forlader with the 404 Bayview Avenue, Inwood, New York, address.

Respondent also seeks relief pursuant to CPLR § 5015(a)(1). Under this subsection, a court must assess whether respondent has established an “excusable default.” The showing of an excusable default is two-pronged, insofar as a party “must demonstrate a reasonable excuse for the default and a potentially meritorious defense to the action.” *Deutsche Bank Nat. Trust Co. v. Luden*, 91 AD3d 701, 702 [2d Dept 2012]. Since the court has rejected respondent’s assertion that it lacked jurisdiction over him, the remaining “reasonable excuse” is Mr. Forlader’s statement in his affidavit that he did not receive the pleadings because of the shared mailbox at the 404 Bayview Avenue address. However, this statement is not accompanied by any substantiating evidence. Moreover, to the extent that respondent does not volunteer how service would have otherwise reached him, the excuse is not reasonable. *Wells Fargo Bank, N.A. v. Eliacin*, 206 AD3d 950, 952 [2d Dept 2022] [Conclusory and unsubstantiated allegations in an affidavit are insufficient to demonstrate a reasonable excuse]. Since respondent has not set forth a reasonable excuse, the court does not reach the issue of whether respondent has established a potentially meritorious defense. *See Citibank, N.A. v. Vela*, 2022 NY Slip Op 05831 [2d Dept 2022]; *Wells Fargo Bank, N.A. v. Echevarria*, 204 AD3d 955, 957 [2d Dept 2022].

For each of these reasons, respondent’s motion to vacate the default judgments and the prior default orders is denied. The court also denies respondent’s motion to dismiss (insofar as it was based on lack of personal jurisdiction) as lacking in merit and as procedurally improper in the absence of vacatur of the default judgments. *See Israel*, 2017 NY Slip Op 51667[U], *1.


CONCLUSION

For the foregoing reasons, respondent’s motion is denied in its entirety. All stays are vacated. The court will restore the proceeding for the hearing on petitioner’s attorneys’ fees in

relation to the civil contempt fine in Part C, Room 407, 89-17 Sutphin Boulevard, Jamaica, NY 11435 on November 15, 2022 at 2:30 PM. This Decision/Order will be filed to NYSCEF and a copy will be emailed to DHPD's attorneys.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: Queens, New York
October 27, 2022


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

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SO ORDERED - HON. CLINTON J. GUTHRIE

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