Ronald Blatt, M.D., P.C. v Park
2022 NY Slip Op 34027(U)
November 29, 2022
Supreme Court, New York County
Docket Number: Index No. 157482/2019
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT:	**HON. ARLENE P. BLUTH**	**PART**	**14**
	Justice		

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RONALD BLATT, M.D., P.C.,EAST SIDE GYNECOLOGY SERVICES, P.C.,

Plaintiffs,

- v -

BRIAN E. PARK, A BRONX WOMEN'S MEDICAL PAVILION, P.C.,

Defendants.

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INDEX NO. 157482/2019

MOTION DATE 11/29/2022

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 52, 53, 54, 55, 56, 57, 58, 59, 60, 61

were read on this motion to/for STAY.

Defendants' second motion to vacate the judgment entered against them is denied.

Background

Previously, plaintiffs obtained a judgment on default against defendants with respect to an unpaid loan as well as certain administrative, billing and staffing services plaintiffs provided to defendants. The judgment was entered on February 10, 2020 (NYSCEF Doc. No. 24).

Defendants then moved to vacate that judgment in August 2020 and the Court, in a decision uploaded on September 18, 2020, denied that application. The Court concluded that defendants failed to raise a reasonable excuse for their default and pointed out that defendants admitted that they knew about the case both before and after it was commenced (NYSCEF Doc. No. 5 at 2). In fact, the Court observed that plaintiffs had numerous communications with defendants about settling the case and that defendant Park was served via personal in hand service (*id.*).

Now, more than two years after that unsuccessful application, defendants move again to vacate their default. Defendant Park claims that circumstances have changed after the previous application. He insists that when this case was commenced, he "was in a deep state of depression" and "could not function." Defendant Park attaches evaluations from February 2019 and July 2020 that purportedly show that he suffers from depression (NYSCEF Doc. No. 57). The report from July 2020 contained a diagnosis of "mild depression" and "mild anxiety" (*id.*).

He claims that he was completely incapable of dealing with this case and so he has a reasonable excuse for his default. Also submitted is an affidavit from his wife in which she says that her husband could not focus or work and had trouble with cognitive issues. She adds that he could not function as a physician for "quite some time" (NYSCEF Doc. No. 54 at 1).

In opposition, plaintiffs argue that the instant application is untimely as it was not made within one year after service of notice of entry of the judgment or the decision that denied the first attempt to vacate. Plaintiffs insist that defendants do not explain why they waited two years after the denial of the first application to bring the instant motion. They point out that defendants make exactly the same arguments they raised in the first motion to vacate, namely that defendant Park could not function, he owes plaintiffs no money and that plaintiff Blatt provided no services to defendants.

Discussion

"A motion to vacate a judgment pursuant to CPLR 5015(a)(1) on the ground of excusable default must be made within one year after service upon the moving party of a copy of the judgment, with notice of its entry" (*Diaz v Wyckoff Hgts. Med. Ctr.*, 148 AD3d 778, 779, 49 NYS3d 149 [2d Dept 2017] [internal quotations and citations omitted]).

Here, defendants' motion is clearly untimely as it was made well more than *two years* after both the judgment was entered and after defendants previously moved to vacate. The Court observes that defendants did not appeal the denial of their first motion to vacate or seek to reargue or renew. Instead, defendants decided to apparently make nearly the same exact motion two years later.

"The Supreme Court has the inherent authority to vacate [the] judgment in the interest of justice, even where the statutory one-year period under CPLR 5015(a)(1) has expired" (*Goldenberg v Goldenberg*, 123 AD3d 761, 761-62, 123 AD3d 761 [2d Dept 2014] [internal quotations and citations omitted]).

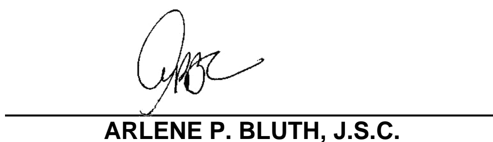
Defendants did not meet their burden to compel the Court to overlook the one-year statutory period. Although defendants attach information about defendant Park's depression diagnosis, that does not compel the Court to vacate the judgment. As an initial matter, the "evaluations" submitted by defendants are from February 2019 and July 2020—both are dated before the previous motion to vacate and they were not included in that application. And the fact that defendant Park was diagnosed with mild anxiety and depression does not explain why he ignored a case he knew about. Nothing submitted shows that defendant Park was utterly incapacitated to the point where he was unable to appear and defend his interests in this case. A vague assertion that "at some point" defendant Park struggled to focus on this case does not constitute a reasonable excuse.

And the emails uploaded to the docket raise doubts about the severity of his medical issues. An email from his wife from April 16, 2019 states that "Brian [defendant Park] completed 6 patient evaluations" (NYSCEF Doc. No. 76). So, two months after the February 2019 depression evaluation and three months prior to when this case was commenced in July

2019, defendant Park was working as a physician according to his wife. Simply put, defendants did not meet their burden for this Court to vacate the judgment.

Accordingly, it is hereby

ORDERED that defendants' second motion to vacate the judgment is denied.



11/29/2022
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:	X	**CASE DISPOSED**			**NON-FINAL DISPOSITION**	
		GRANTED	X	**DENIED**	**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**			**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**			**FIDUCIARY APPOINTMENT**	**REFERENCE**