

Salazar-Ramirez v Martinique Hotel Assoc.
2022 NY Slip Op 34387(U)
December 27, 2022
Supreme Court, New York County
Docket Number: Index No. 153728/2017
Judge: Arlene P. Bluth
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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

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

Justice

-----X

CELSO SALAZAR-RAMIREZ,

Plaintiff,

INDEX NO. 153728/2017

MOTION DATE N/A

MOTION SEQ. NO. 005

- v -

MARTINIQUE HOTEL ASSOCIATES, HKS
CONSTRUCTION CORP, PENTA RESTORATION CORP.,

Defendant.

**DECISION + ORDER ON
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 005) 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

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

The motion by non-party Seasons Affiliates LLC (“Seasons”) to vacate the judgment as to defendant Martinique Hotel Associates (“Martinique”) is granted.

Background

In this disposed case, Seasons moves to vacate a judgment entered on November 17, 2021 by the County Clerk for nearly \$500,000 against all defendants named in this action (NYSCEF Doc. No. 74). Seasons contends that plaintiff allegedly served process on the wrong party. It observes that Seasons’ former name was Martinique Hotel Affiliates (rather than *Associates* as named by plaintiff here) and that the Affiliates entity changed its name to Seasons Affiliates in November 1987. It attaches an amended business certificate to support this claim. Seasons claims that no entity named Martinique Hotel Associates ever owned the property in question and that Seasons has owned it (first as a partnership and now as a limited liability company) for decades.

Seasons observes that plaintiff purportedly effectuated service by serving an entity called Donald Affiliates f/k/a Martinique Hotel Affiliates, Inc. and that this entity was a lessee operating at the premises (a hotel) between 1985 and 1989. It argues that because Seasons was not named in this Labor Law matter and was not aware of the case until September 2022, the judgment should be vacated as to Martinique. It claims it found out about the case while exploring refinancing and a lien against the property was discovered. Seasons requests that it be permitted to appear and respond.

In opposition, plaintiff asserts he served Martinique via the Secretary of State, sent a good faith notice to Martinique and never received a response. He claims that he obtained a judgment and that Seasons did not meet its burden to show that service was improper.

The Court did not consider the reply papers because the order to show cause did not permit a reply.

Discussion

The Court grants the motion. Seasons raised a reasonable excuse for Martinique's default—namely that the entity named as a defendant in this lawsuit does not exist and a similar entity, Martinique Hotel Affiliates, has not existed since 1987. Under these circumstances, Seasons, which admits that it is the owner of the property, should have the opportunity to appear and have this case heard on the merits.

Seasons also raised meritorious defenses by arguing that it is an out-of-possession landlord that is not liable for acts of negligence on the property. It also argues it had no role with the construction project on the site.

Because Seasons has asked this Court the right to appear and respond to the complaint, the Court finds that Seasons has consented to jurisdiction and plaintiff need not serve Seasons.

There is no dispute that plaintiff served a different entity. However, it would be wholly inequitable to permit Seasons to push its way into this case as a defendant and then claim that it was never served (to be clear, Seasons has not made that argument and does not show any intention of making that argument). Plus, the entire record is readily available on NYSCEF.

Accordingly, it is hereby

ORDERED that the instant motion is granted and the judgment is vacated only as to defendant Martinique Hotel Associates; and it further

ORDERED that plaintiff shall serve, by uploading to NYSCEF only (which is deemed sufficient service), an amended complaint (adding allegations against this new defendant) and movant shall answer or otherwise respond to the complaint pursuant to the CPLR; and it is further

ORDERED that this case be restored to the active calendar; and it is further

ORDERED that the caption shall be amended to add defendant Seasons Affiliates LLC and it is further

ORDERED that the caption of the remaining action will be:

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 14**

----- X
CELSO SALAZAR-RAMIREZ

Plaintiff,

-against-

**MARTINIQUE HOTEL ASSOCIATES, HKS
CONSTRUCTION CORP, PENTA
RESTORATION CORP AND SEASONS AFFILIATES
LLC,**

Defendants.


----- X

; and it is further

ORDERED that within 21 days from entry of this order, counsel for the movant shall serve a copy of this decision and order with notice of entry upon the Clerk of the Trial Support Office (Room 158) and the County Clerk (Room 141B) **via e-filing** and those offices shall make the above change to the caption and restore this matter; and it is further

ORDERED that such service upon the County Clerk and 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)].

Conference: March 31, 2023 at 11 a.m. By March 24, 2023, the appearing parties shall upload 1) a discovery stipulation signed by all parties, 2) a stipulation of partial agreement that identifies the areas in dispute or 3) letters explaining why a discovery agreement could not be reached. Based on these submissions, the Court will assess whether an in-person conference is appropriate. The failure to upload anything will result in an adjournment of the conference.

<p style="text-align: center;"><u>12/27/2022</u> DATE</p>		<p style="text-align: center;">_____ ARLENE P. BLUTH, J.S.C.</p>
<p>CHECK ONE:</p>	<p><input type="checkbox"/> CASE DISPOSED</p> <p><input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED</p>	<p><input checked="" type="checkbox"/> NON-FINAL DISPOSITION</p> <p><input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER</p>
<p>APPLICATION:</p>	<p><input type="checkbox"/> SETTLE ORDER</p> <p><input type="checkbox"/> INCLUDES TRANSFER/REASSIGN</p>	<p><input type="checkbox"/> SUBMIT ORDER</p> <p><input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE</p>
<p>CHECK IF APPROPRIATE:</p>		