

36 & 37 Realty, LLC v Patel

2023 NY Slip Op 30287(U)

January 30, 2023

Supreme Court, New York County

Docket Number: Index No. 150276/2022

Judge: Paul A. Goetz

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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. PAUL A. GOETZ PART 47

Justice

-----X

36 AND 37 REALTY, LLC

Plaintiff,

- v -

SANJAY S. PATEL,

Defendant.

-----X

INDEX NO. 150276/2022

MOTION DATE 11/10/2022

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51 were read on this motion to/for JUDGMENT - DEFAULT

This action arises out of an alleged breach of a residential lease. Plaintiff 36 and 37 Realty, LLC moves, pursuant to CPLR § 3215, for a money judgment on default against defendant Sanjay Patel for rent arrears, use and occupancy, and late fees. Plaintiff seeks an inquest with respect to the assessment of damages. Defendant opposes the motion, arguing he has provided both a reasonable excuse for the default and a meritorious defense against plaintiff's claims.

Background

Plaintiff owns a building located at 307 East 37th Street, New York, New York (Rothken Aff, NYSCEF Doc No 20 at ¶ 4). On October 28, 2020, plaintiff, as landlord, and defendant, as tenant, entered into a written lease for apartment 2 in the building for a twenty-six month term commencing November 1, 2020 and ending December 31, 2022, with monthly rent set at \$4,200 (id. at ¶¶ 5, 7). Defendant allegedly failed to pay the monthly rent due in May 2021, July 2021, and from September 2021 until the lease was terminated on November 25, 2021 because of defendant's alleged nuisance conduct (id. at ¶¶ 8-9). Defendant never vacated (id. at ¶ 12).

Plaintiff contends that defendant owes rent in the amount of \$21,000 for May through November 2021, which takes into account \$8,400 defendant paid for the months of June and August 2021 (*id.* at ¶ 11). According to the comprehensive rider annexed to the lease,

“[i]f the Premises are not vacated and surrendered in accordance with this Lease . . . on the date required by this Lease . . . Tenant shall be liable to Landlord for use and occupancy for each months or any part thereof (without any daily apportionment) in which the Premises are not vacated and surrendered at a rate equal to twice the Rent payable under this Lease for the last year of the Term (which Landlord and Tenant agree is the Rent that is contemplated by them as being fair and reasonable under such circumstances and is not a penalty).”

(NYSCEF Doc No 26, ¶ 3). Pursuant to this provision, plaintiff also seeks \$84,000 in use and occupancy for the period of December 2021 until September 2022 as well as \$700 in late fees for the period of September 2021 until September 2022 (NYSCEF Doc No 20, ¶¶ 15, 18-20).

Plaintiff commenced this action on January 10, 2022 by filing a summons and verified complaint (Svetlichnya Affirm, NYSCEF Doc No 19 at ¶ 3). The summons and verified complaint were served on January 13, 2022 pursuant to CPLR § 308 upon a person of suitable age and discretion (*id.* at ¶ 4). Additional copies of the summons and verified complaint were served on January 20, 2022 by first class mail upon defendant pursuant to CPLR § 3215 [g] [3] [i] and [ii] (*id.* at ¶ 5). Defendant did not answer (*id.* at ¶ 6).

Discussion

An application for a default judgment must be supported with proof of service of the summons and complaint, proof of the facts constituting the claim, and the default (CPLR § 3215 [f]). “To successfully oppose a motion for leave to enter a default judgment, a defendant must demonstrate a reasonable excuse for the default and a meritorious defense” (*Morrison Cohen LLP v Fink*, 81 AD3d 467, 468 [1st Dept 2011]). It is within the court’s discretion to determine

what constitutes a reasonable excuse (*see Xiaoyong Zhang v Jong*, 195 AD3d 435, 435 [1st Dept 2021]). Factors to consider include “the extent of the delay, whether there has been prejudice to the opposing party, whether there has been willfulness, and the strong public policy in favor of resolving cases on the merits” (*New Media Holding Co. v Kagalovsky*, 97 AD3d 463, 465 [1st Dept 2012] [internal quotation marks and citation omitted]).

Here, plaintiff meets its burden of proof needed on an application for a default judgment under CPLR § 3215 [f]. Plaintiff attached the summons and complaint and the affidavit of service pursuant to CPLR § 308 and CPLR § 3215 [g] [3] (*see* NYSCEF Doc No 23), proof of the claim based on submission of affidavit from plaintiff (*see* NYSCEF Doc No 20), and proof of default based on submission of affidavit from plaintiff’s attorney (*see* NYSCEF Doc No 19, ¶ 18 [“Defendant was required to interpose an answer to the verified complaint by February 20, 2022—thirty days after the affidavit of service was filed with the Court.”]). The additional requirement of submitting an affidavit confirming defendant’s status of nonmilitary service under the Servicemembers Civil Relief Act, 50 USC § 3901, is also met (NYSCEF Doc No 29).

Even though plaintiff meets its burden for a default judgment defendant argues that he has reasonable excuses for the default because he had difficulty seeking legal representation due to finances, he thought his application for the Emergency Rental Assistance Program (ERAP) would stay the action, and he assumed ongoing settlement discussions with plaintiff would obviate the lawsuit. Ignorance of the law (*U.S. Bank Natl. Assn. v Salvatierra*, 205 AD3d 757 [2d Dept 1986]; *see also Montera v KMR Amsterdam LLC*, 193 AD3d 102, 107 [1st Dept 2021]), erroneous assumptions regarding the need to defend (*U.S. Bank Natl. Assn. v Slavinski*, 78 AD3d 1167 [2d Dept 2010]), and the inability to afford counsel (*Hermitage Ins. Co. v Athena Mgt. Corp.*, 115 AD3d 628 [1st Dept 2014]) do not constitute “reasonable excuses” for defaulting.

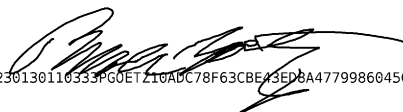
Defendant’s assumption that his ERAP application would stay this action is invalid because the statute only stays eviction actions and the present matter is one for a money judgment (L 2021, ch 56, part BB, subpart A, § 8).

Additionally, defendant does not meet his prima facie burden of a meritorious defense by arguing that if his most recent ERAP application is approved then he will be able to pay the arrears and save his tenancy. As plaintiff points out, defendant’s application for ERAP is not a defense but rather a hope, perhaps a tenuous one considering his application was previously denied due to income ineligibility (NYSCEF Doc No 42, ¶ 32), to pay the rent arrears and use and occupancy due and owing.

Accordingly, it is hereby

ORDERED that the motion brought by plaintiff 36 and 37 Realty, LLC for a default judgment (mot seq no 002) is granted against defendant Sanjay Patel on liability on the first cause of action in plaintiff’s complaint; and it is further

ORDERED that an inquest on damages shall be held after the filing of the note of issue.


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1/30/2023
DATE

PAUL A. GOETZ, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: