

**C.S. Brown Co., Inc. v Genesis Y15 Owners LLC**

2023 NY Slip Op 32012(U)

June 15, 2023

Supreme Court, New York County

Docket Number: Index No. 155681/2022

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH **PART** **14**

*Justice*

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C. S. BROWN CO., INC.,

Plaintiff,

- v -

GENESIS Y15 OWNERS LLC,HP GENESIS Y15 HOUSING  
DEVELOPMENT FUND COMPANY, INC.

Defendant.

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**INDEX NO.** 155681/2022

**MOTION DATE** 06/12/2023

**MOTION SEQ. NO.** 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64

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

Defendants’ motion to vacate the default judgment entered against them is denied.

**Background**

Plaintiff obtained a default judgment against defendants in March 2023 (NYSCEF Doc. No. 31).

Defendants now move to vacate pursuant to CPLR 317 and 5015(a). They claim that they had no notice about this case because defendant Genesis Y15 Owners LLC (“Genesis”) failed to keep a current address with the Secretary of State (the method by which plaintiff effectuated service). Genesis claims it moved offices in June 2020 and finally updated its address with the Secretary of State in 2023 when it filed its biennial statement. Genesis claims it has a meritorious defense because the property manager (“Winn”) for the building failed in its management responsibilities and was later fired.

Defendant HP Genesis Y15 Housing Development Fund Company, Inc. (“HP”) does not argue that service was improper. Instead, it argues that Genesis entered into a contract with the property manager and that Winn contacted vendors such as plaintiff. (Plaintiff seeks recovery for unpaid goods and services). HP observes that there is a nominee agreement with co-defendant Genesis whereby Genesis is responsible for defending HP in any litigation regarding the premises. HP claims it thought that when this litigation was commenced, it assumed that Genesis would be responsible for defending this matter.

In opposition, plaintiff emphasizes that Genesis did not promptly update its address with the Secretary of State despite the fact that Genesis claims it moved offices in June 2020. It points out that Genesis claims it waited to update the Secretary of State about the new address until it filed a biennial registration in March 2023. Plaintiff stresses that Genesis filed a biennial registration on November 18, 2020 that did not contain the new address.

With respect to the meritorious defense issue, plaintiff argues that it entered into contracts with Winn, an agent for disclosed principals (defendants) and that defendants can pursue an action against Winn if they desire.

In reply, defendants insist that vacatur is appropriate under New York law and that there was simply a miscommunication between HP and Genesis about appearing (and defending) this action. They assert there are meritorious defenses regarding what Winn was supposed to do in its role as property manager.

## **Discussion**

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: 1. 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 to vacate a judgment based on excusable default must demonstrate both a reasonable excuse for the default and a meritorious defense” (*Leader v Parkside Group*, 174 AD3d 420, 421, 103 NYS3d 427 [1st Dept 2019])

The Court begins its analysis with defendant Genesis. Genesis is not entitled to relief under CPLR 5015(a) because it did not update its address with the Secretary of State and so it cannot show a reasonable excuse (*Gomez v Karyes Realty Corp.*, 211 AD3d 576, 577, 178 NYS3d 443 (Mem) [1st Dept 2022]). Moreover, as plaintiff pointed out, Genesis filed a biennial statement with the Secretary of State in November 2020 (NYSCEF Doc. No. 61) that did not update its address despite the fact that Genesis admits it moved months earlier in June 2020.

And defendant HP does not deny that it received service (service was effectuated in August 2022). Rather, it blames its co-defendant Genesis for not stepping in to defend both of them pursuant to an agreement between these parties. The Court finds that is not a reasonable excuse for failing to appear and answer in a matter that HP admits it knew about. HP did not attach any communications showing that it reached out to Genesis to inquire about the status of this case in the months leading up to the entry of a default judgment. Rather the affidavit from its VP (NYSCEF Doc. No. 41) suggests it merely assumed that Genesis was handling its defense here without detailing any efforts to confirm that assumption. Assuming that a co-defendant is taking care of defending an action without any effort to validate that belief is not reasonable.

The Court must also analyze defendants’ motion under CPLR 317. This statute states, in part, that “A person served with a summons other than by personal delivery to him or to his

agent for service designated under rule 318, within or without the state, who does not appear may be allowed to defend the action within one year after he obtains knowledge of entry of the judgment, but in no event more than five years after such entry, upon a finding of the court that he did not personally receive notice of the summons in time to defend and has a meritorious defense.” “[N]o showing of a reasonable excuse is required under CPLR 317” (*Gomez*, 211 AD3d at 577).

Although Genesis was served via the Secretary of State and did not personally receive notice, neither Genesis nor HP demonstrated a meritorious defense.<sup>1</sup> As plaintiff argues, and defendants do not dispute, it entered into a contract with defendants’ property manager Winn. Defendants even attached a management agreement which named Winn as the property manager for the subject buildings (NYSCEF Doc. No. 44). That means that defendants are bound by Winn’s actions as an agent for disclosed principals. “Generally, principals are liable for the acts of their agents performing within the scope of their apparent authority” (*News Am. Mktg., Inc. v Lepage Bakeries, Inc.*, 16 AD3d 146, 148, 791 NYS2d 80 [1st Dept 2005]).

Defendants’ do not contest the merits of the invoices sent by plaintiff or that plaintiff failed to perform. Instead, they raise concerns about Winn’s actions and even claim that Winn’s failures led to defendants’ decision to terminate Winn. But that is not a meritorious defense to plaintiff’s claims. It may detail causes of action that defendants could consider pursuing against Winn.

This is not a situation where defendants claim that Winn was never their agent, that Winn lacked the authority to enter into a contract with plaintiff, or that plaintiff never provided the contracted goods and services (the invoices suggest plaintiff provided masks and cleaning


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<sup>1</sup> Obviously, HP is not entitled to relief under CPLR 317 as it does not deny that it was served.

supplies) to defendants. Instead, defendants appear to argue that they are not liable because Winn exceeded the budget provided by defendants. Unfortunately, that is not a cognizable defense to plaintiff’s contractual relationship with defendants.

Accordingly, it is hereby

ORDERED that defendants’ motion to vacate is denied.

<u>6/15/2023</u> <b>DATE</b>			 <hr/> <b>ARLENE P. BLUTH, J.S.C.</b>	
<b>CHECK ONE:</b>	<input checked="" type="checkbox"/>	<b>CASE DISPOSED</b>	<input type="checkbox"/>	<b>NON-FINAL DISPOSITION</b>
	<input type="checkbox"/>	<b>GRANTED</b>	<input checked="" type="checkbox"/>	<b>DENIED</b>
<b>APPLICATION:</b>	<input type="checkbox"/>	<b>SETTLE ORDER</b>	<input type="checkbox"/>	<b>GRANTED IN PART</b>
<b>CHECK IF APPROPRIATE:</b>	<input type="checkbox"/>	<b>INCLUDES TRANSFER/REASSIGN</b>	<input type="checkbox"/>	<b>SUBMIT ORDER</b>
			<input type="checkbox"/>	<b>FIDUCIARY APPOINTMENT</b>
			<input type="checkbox"/>	<b>OTHER</b>
			<input type="checkbox"/>	<b>REFERENCE</b>