

**Meridian Layout, Inc. v Atria Bldrs., L.L.C.**

2023 NY Slip Op 32071(U)

June 22, 2023

Supreme Court, New York County

Docket Number: Index No. 157201/2022

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*

-----X

MERIDIAN LAYOUT, INC.,

Plaintiff,

- v -

ATRIA BUILDERS, L.L.C., 37-11 OWNER LLC, "JOHN DOE  
NO. "1" THROUGH "JOHN DOE NO. 5"

Defendant.

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INDEX NO. 157201/2022

MOTION DATE 06/21/2023

MOTION SEQ. NO. 004

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 42, 43, 44, 45, 46, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65

were read on this motion to/for COMPEL ARBITRATION.

Defendants’ motion to vacate the default judgment entered against it and to compel arbitration is granted.

**Background**

The instant dispute arises out of a construction project in Manhattan. Defendant 37-11 Owner LLC owns the property and defendant Atria Builders, LLC (“Atria”) is the general contractor for the project, which involves the construction of a 51-story hotel. Plaintiff was hired by defendant Atria to do survey work and claims that it is owed \$181,015.00 for unpaid services it provided to defendants.

Previously, this Court granted plaintiff’s motion for a default judgment on default against defendants (NYSCEF Doc. No. 32). Defendants now move to vacate that decision and to compel arbitration of this dispute. They insist they had no notice of the instant action and did not intend to default. Defendants also argue that the terms of plaintiff’s contract with Atria required

disputes to be handled in arbitration. They point out that the additional mailing plaintiff was required to send pursuant to CPLR 3215(g)(4) was sent to an incorrect address.

In opposition, plaintiff contends that it served defendants via the Secretary of State and that defendants had a reasonable time to appear and oppose the instant motion. Plaintiff insists that defendants willfully defaulted and have no meritorious defenses. It also argues that plaintiff agreed to pay the amount sought in the related mechanic's lien as part of a failed refinancing and that this constitutes an admission that plaintiff is owed the amount it seeks. Plaintiff acknowledges that the additional mailing was sent to the wrong suite number but that this error is irrelevant.

In reply, defendants emphasize that the parties agreed to resolve disputes in arbitration and that this case should be decided on the merits.

### **Discussion**

“CPLR 5015(a) provides that a party may be relieved from a judgment on the ground of, among others, excusable default. A defendant seeking to vacate a default under this provision must demonstrate a reasonable excuse for its delay in appearing and answering the complaint and a meritorious defense to the action” (*Eugene Di Lorenzo, Inc. v A.C. Dutton Lbr. Co., Inc.*, 67 NY2d 138, 141, 501 NYS2d 8 [1986]).

CPLR 317 “states, in part, that a person served with a summons other than by personal delivery to him or to his agent for service under [CPLR] 318 may be allowed to defend the action within one year after he obtains knowledge of entry of the judgment 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. As has been emphasized in numerous cases, there is no necessity for a defendant

moving pursuant to CPLR 317 to show a reasonable excuse for its delay” (*id.* [internal quotations and citations omitted]).

As an initial matter, the Court observes that defendants raised a reasonable excuse for their delay in responding as they claim they did not get notice about this case until a reporter asked them about it on May 5, 2023. They deny that they received the summons and complaint. Defendants also raised a meritorious defense by claiming that plaintiff offered inadequate work that required it to expend more money to fix plaintiff’s mistakes. This establishes a sufficient basis to vacate the default judgment and there is no basis to find that defendants willfully defaulted. Plaintiff also failed to sufficiently show how defendants’ purported effort to refinance (and possibly pay off the mechanic’s lien) constitutes an admission that plaintiff is owed every cent it seeks.

Moreover, the Court observes that defendants properly argued that this dispute should be handled in arbitration. The agreement between plaintiff and Atria provided that:

“Any action or proceeding arising out of or in connection with this Agreement shall be subject to arbitration before the American Arbitration Association (the "AAA") in accordance with the AAA's Construction Industry Arbitration Rules currently in effect. The arbitration hearings shall take place on Long Island. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with New York law” (NYSCEF Doc. No. 44, ¶ 17).

The parties agreed to an alternative dispute resolution provision in their contract that clearly applies to the instant dispute. Plaintiff does not claim that it did not enter into this agreement or raise any arguments about why this arbitration provision should not be enforced. Therefore, this matter is stayed pending arbitration pursuant to CPLR 7503(a).

And, finally, the Court observes that vacatur is appropriate here in the interest of justice. Plaintiff seeks to sell the entire property to recover what it claims it is owed. Such a request

directly implicates this state’s preference for deciding cases on the merits (*see Santiago v Valentin*, 125 AD3d 459, 459, 4 NYS3d 2 [1st Dept 2015]).

Accordingly, it is hereby

ORDERED that defendants’ motion is granted and the default judgment entered against it is vacated; and it is further

ORDERED that the branch of defendants’ motion to compel arbitration and to stay this action is granted; and it is further

ORDERED that plaintiff shall arbitrate its claims against defendants in accordance with the contract at issue; and it is further

ORDERED that all proceedings in this action are hereby stayed, except for an application to vacate or modify said stay; and it is further

ORDERED that either party may make an application by order to show cause to vacate or modify this stay upon the final determination of the arbitration.

Control Date: October 4, 2023 at 10:30 a.m. By September 27, 2023 the parties shall update the Court about the status of the arbitration.

6/22/2023  
DATE

  
ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER  
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: