

Nomad Group LLC v 99-105 Third Ave. Realty, LLC

2023 NY Slip Op 32178(U)

June 30, 2023

Supreme Court, New York County

Docket Number: Index No. 650149/2023

Judge: Arlene Bluth

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This opinion is uncorrected and not selected for official publication.

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

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NOMAD GROUP LLC	INDEX NO.	<u>650149/2023</u>
Plaintiff,	MOTION DATE	<u>N/A</u>
- v -	MOTION SEQ. NO.	<u>002</u>
99-105 THIRD AVENUE REALTY, LLC,		
Defendant.		

**DECISION + ORDER ON
MOTION**

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HON. ARLENE P. BLUTH:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 19, 20, 21, 22, 23, 24, 25, 27, 28
 were read on this motion to/for VACATE - DEFAULT.

Defendant 99-105 Third Avenue Realty, LLC's motion to vacate the default judgment entered against it is granted.

Background

Defendant is the owner of a commercial real estate building. Plaintiff, a brokerage firm, contends that it entered into a contract with defendant to help lease a unit in the building. After plaintiff secured a tenant for the ground floor commercial space unit, plaintiff argues that it never received the final payment (defendant allegedly paid the first two of three installments). Plaintiff eventually obtained a default judgment against defendant for the final installment.

Defendant now moves to vacate its default and claims that it did not receive a copy of the summons and complaint until March 17, 2023 from the Secretary of State, well after its time to answer had expired. It argues that it has a meritorious defense for not paying the final installment because the tenant procured for the space defaulted and the agreement contains a provision absolving defendant of its obligation to pay the commission if the tenant is in default.

Defendant attaches the affidavit of Steve Croman, its managing member, who explains that defendant hired non-party Meridian as a broker to assist in leasing a commercial space in the building. He attaches a copy of that contract (the one between Meridian and defendant) and claims that at some point, Meridian and plaintiff entered into an agreement to co-list the commercial space. Mr. Croman contends that plaintiff and defendant never directly entered into a contract in which defendant agreed to pay plaintiff for its services in connection with the leasing of the subject premises.

Plaintiff contends in opposition that defendant failed to raise a reasonable excuse or a meritorious defense. It argues that defendant only offered self-serving allegations in support of its motion and that there is no basis to vacate the Court's decision.

In reply, defendant observes that it submitted the affidavit of Steve Croman (managing member of defendant) and therefore it has raised a meritorious defense.

Discussion

“As to vacating the default, a party seeking to vacate a default judgment must demonstrate both a reasonable excuse for the default and a meritorious defense” (*Aetna Life Ins. Co. v UTA of KJ Inc.*, 160 NYS3d 590, 2022 NY Slip Op 01266 [1st Dept 2022]).

The Court grants the motion. Defendant raised a reasonable excuse for vacating the Court's order granting a default judgment against it by asserting that it did not timely receive a copy of the commencing papers from the Secretary of State. Moreover, “this State also has a strong public policy for deciding cases on the merits” (*US Bank Nat. Ass'n v Richards*, 155 AD3d 522, 523, 65 NYS3d 178 [1st Dept 2017]). Therefore, the various procedural arguments raised by plaintiff (about whether or not defendant made the correct type of motion) are without merit. This Court prefers to decide cases on the merits.

And defendant raised a meritorious defense by asserting that it never entered into an agreement directly with plaintiff. Defendant correctly pointed out that although plaintiff mentions an agreement it entered into with defendant, that agreement was never uploaded to NYSCEF. Without that agreement, the Court finds that vacatur is appropriate. The only agreement on this docket is the one between defendant and non-party Meridian.

Accordingly, it is hereby

ORDERED that the motion by defendant to vacate the default judgment is granted and defendant shall have until July 13, 2023 to answer or otherwise respond to the complaint; and it is further

ORDERED that the matter is restored to the active calendar; and it is further


ORDERED that, within 7 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon 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);] and it is further

ORDERED that upon receipt of the foregoing, the Clerk of the General Clerk's Office shall immediately restore the case to the active calendar.

Conference: September 18, 2023 at 12 p.m. By September 11, 2023, the parties are directed to upload a proposed discovery stipulation. If an agreement cannot be reached, then they shall

upload letters explaining any outstanding discovery disputes. The failure to upload anything by September 11, 2023 will result in an adjournment of the conference.

<u>6/30/2023</u> DATE					 ARLENE BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					OTHER
					REFERENCE