

EA 132nd LLC v Harlem Invs. LLC

2023 NY Slip Op 33647(U)

October 18, 2023

Supreme Court, New York County

Docket Number: Index No. 155201/2022

Judge: Lisa S. Headley

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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. LISA S. HEADLEY PART 28M

Justice

EA 132ND LLC,

Plaintiff,

- v -

HARLEM INVESTORS LLC, ONE 100 STREET
CORPORATION, JOHN DOE #1-10, ABC CORP. #1-10

Defendant.

INDEX NO. 155201/2022
MOTION DATE 8/08/2023
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 19, 20, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38

were read on this motion to/for

MISCELLANEOUS

Defendants, Harlem Investors, LLC and One 100 Street Corporation, (collectively the "movant-defendants") move this Court, pursuant to CPLR §3012(d), for an Order compelling Plaintiff to accept service of their Verified Answer and Counterclaims, and Notices to take Deposition Upon Oral Examinations ("deposition notices"). Plaintiff, EA 132nd LLC ("Plaintiff"), filed opposition and a cross-motion for a default judgment, pursuant to CPLR §3215, against the movant-defendants. Movant-defendants filed opposition to Plaintiff's cross-motion.

Defendants' Motion to Compel

In the instant motion, the movant-defendants contend that the plaintiff should be compelled to accept defendants' Answer and deposition notices because defendant Harlem Investors only received a copy of the notice on this action via the Secretary of State on October 5, 2022, whereas defendant One 100 Corp. had not received the notice. Defendants contend that the plaintiff has failed to file affidavits of service of the complaint in this action. Defendants also assert that the Answer and deposition notice were filed and served on plaintiff a "mere 8 days after Harlem Investors received the notice."

Defendants' counsel asserts that he attempted to contact plaintiff's counsel, via a phone call and e-mail, to explain the issue regarding service, and to request that plaintiff withdraw its notice of rejection and to accept service of the Answer and deposition notice, which plaintiff has

not consented to accept. Defendants argue there is no prejudice to the plaintiff in its delay in serving the Answer, and that such late responsive pleadings should be accepted. Additionally, defendants argue there is a strong public policy favoring the determination of actions on their merits.

Plaintiff's Opposition and Cross-Motion for Default Judgment

Plaintiff filed opposition to the motion to compel, and cross-moved, pursuant to *CPLR* §3215, for an Order granting Plaintiff a default judgment against movant-defendants. Plaintiff submits that the defendants were served with process in this action on June 30, 2022, and then service was complete on the date the Secretary of State was served. Plaintiff claims that defendant failed to serve an Answer within 30 days pursuant to *CPLR* §3012(c). Plaintiff further argues that the movant-defendants have not proffered a reasonable excuse for their default in filing an answer, and failed to demonstrate a meritorious defense. In addition, plaintiff argues that in support of the motion, defendants rely on an attorney affirmation, which is insufficient because the attorney has no personal knowledge of the facts. Further, in support of the cross-motion for a default judgment, plaintiff argues that since defendants did not timely serve an Answer prior to the August 1, 2022, deadline, the Answer is rejected, and a default judgment should be granted.

Defendants' Opposition to Plaintiff's Cross-Motion

In opposition to the cross-motion and in further support of their motion to compel, the defendants submitted the affidavit of Joseph Makhani, as well as their attorneys' affirmation. Defendants argue that they did not appear in this action until they filed their Answer in October 2022 because the New York Secretary of State did not provide notice to defendant Harlem Investors LLC's agent until October 2022, and no such notice has been provided to defendant One 100 Street Corp.'s agent. Furthermore, movant-defendants assert they have meritorious defenses to this action and a valid counterclaim to quiet title in their favor because Plaintiff's alleged grantor, Ronald Stewart ("Stewart"), did not inherit any right, title, or interest in the subject property upon the death of the decedent related to this action. Movant-defendants argue that given Stewart's prior tenancy at the Property, Plaintiff would not be able to establish the elements of adverse possession, rather it will be shown that Stewart and his mother resided at the property with the permission of the decedent. Therefore, movant-defendants request this Court to grant their motion to compel plaintiff to accept the Answer, and to deny Plaintiff's cross-motion for a default judgment.

Discussion

There exists a strong public policy in favor of disposing of cases on their merits. *See e.g., Goncalves v. Stuyvesant Dev. Assoc.*, 232 A.D.2d 275, 276, 648 N.Y.S.2d 441 (1st Dep't 1996). However, this policy does not relieve a party moving to vacate a default from satisfying the two-pronged test of showing both (1) a reasonable excuse for the default; and (2) a meritorious defense to the action. *Id.*; *see also, DTG Operations, Inc. v. Excel Imaging, P.C.*, 119 A.D.3d 410, 990 N.Y.S.2d 8 (1st Dep't 2014). *CPLR § 3012(d)* provides that "upon the application of a party, the court may extend the time to appear or plead, or compel the acceptance of a pleading untimely served, upon such terms as may be just and upon a showing of reasonable excuse for delay or default." *Ardel Constr. & Design Grp., Corp. v. VBG 990 AOA LLC*, 77 Misc. 3d 1219(A) (N.Y. Sup. Ct. 2023). Furthermore, to successfully oppose a *CPLR §3215(a)* motion for default judgment, here the defendants must show a reasonable excuse for the default and a meritorious defense. *Zhang v Jong*, 195 A.D.3d 435 (1st Dep't 2021).

Here, this Court finds the movant-defendants demonstrated a reasonable excuse in that there was "de minimis" delay in filing their Answer eight days after they claim to have received notice via the Secretary of State upon defendant Harlem Investors, combined with their claim that the defendant One 100 Corp. did not receive a notice from the Secretary of State. Here, the Court has considered to be credible the attorneys' affirmation submitted in support of the motion, as well as the defendant's affidavit filed in opposition to the motion for default judgment and in further support of the motion to compel. This Court also considers that the plaintiff only filed the affidavits of service of the complaint in this case, as an exhibit to their cross-motion. In the interest of justice, the Court will permit the filing of the affidavits of service as well as the Answer filed.

Furthermore, there is no indication that the delay was willful or that it was prejudicial to the plaintiff. The defendants presented a meritorious defense in their papers, including that plaintiff's alleged grantor did not inherit any right, title, or interest in the subject property upon the death of the decedent related to this action. As it is the Court's policy of resolving cases on the merits, this Court grants the movant-defendants' motion to compel plaintiff to accept their answer, counterclaims, and deposition notices pursuant to *CPLR §3012(d)*. Therefore, the plaintiff's cross-motion for a default judgment against movant-defendants is denied.

Accordingly, it is hereby

ORDERED that Defendants Harlem Investors LLC and One 100 Street Corporation's motion pursuant to *CPLR §3012(d)* compelling Plaintiff to accept service of movant-defendants' Verified Answer and Counterclaims and Notices to Take Deposition Upon Oral Examinations is GRANTED, and it is further

ORDERED that Plaintiff EA 132nd LLC's cross-motion, pursuant to *CPLR §3215*, for a default judgment against movant-defendants, is DENIED, and it is further

ORDERED that the parties are directed to complete the Preliminary Conference Order attached hereto and to submit same to the Part 28 clerk via e-mail and upload to NYSCEF; and it is further

ORDERED that any requested relief sought not expressly addressed herein has nonetheless been considered; and it is further

ORDERED that within 30 days of entry, movant-defendants shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision and Order of the Court.

Lisa S. Headley (82)

10/18/2023
DATE

| | | |
|-----------------------|---|---|
| CHECK ONE: | <input type="checkbox"/> CASE DISPOSED | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION |
| APPLICATION: | <input checked="" type="checkbox"/> GRANTED | <input type="checkbox"/> GRANTED IN PART |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> SETTLE ORDER | <input type="checkbox"/> SUBMIT ORDER |
| | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> FIDUCIARY APPOINTMENT |
| | <input type="checkbox"/> DENIED | <input type="checkbox"/> OTHER |
| | | <input type="checkbox"/> REFERENCE |



SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK
INDIVIDUAL ASSIGNMENT PART [OR JUSTICE] HON. LISA S. HEADLEY

EA 132ND LLC

IAS Part: 28

Plaintiff(s)

Index No.: 155201/2022

- against -

DCM Track: Standard

HARLEM INVESTORS LLC et al

Appearance no: 004

Defendant(s)

PRELIMINARY CONFERENCE ORDER

(202.8, 202.12 and 202.19 of the Uniform Rules)

APPEARANCES

Plaintiff(s): _____

Defendant(s): _____

It is hereby ORDERED that disclosure shall proceed as follows:

(1) Insurance Coverage: If not already provided, shall be furnished by _____ on or before _____.

(2) Bill of Particulars:

(a) Demand for a bill of particulars shall be served by _____ on or before _____.

(b) Bill of particulars shall be served by _____ on or before _____.

(c) A supplemental bill of particulars shall be served by _____ as to Items _____ on or before _____.

(3) Medical Reports and Authorizations:

Shall be served as follows: _____

(4) Physical Examination:

(a) Examination of _____ shall be held _____

(b) A copy of the physician's report shall be furnished to plaintiff within _____ days of the examination.

(5) Depositions: Depositions of Plaintiff(s) Defendant(s) All Parties shall be held _____

(6) Other Disclosure:

(a) All parties, on or before _____, shall exchange names and addresses of all eye witnesses and notice witnesses, statements of opposing parties, and photographs, or, if none, provide an affirmation to that effect.

(b) Authorization for plaintiff s(s') employment records for the period _____ shall be furnished on or before _____.

(c) Demand for discovery and inspection shall be served by _____ on or before _____. The items sought shall be produced to the extent not objected to, and objections, if any, shall be stated on or before _____.

(d) Other [interrogatories, etc.] _____



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(7) **End Date for All Disclosure:**

(8) **Impleader:** Shall be completed on or before _____

(9) **Compliance Conference:** Shall be held on _____

(10) **Motions:** Any dispositive motion(s) shall be made on or before _____

(11) **Note of Issue:** _____ shall file a note of issue/certificate of readiness on or before _____. A copy of this order, an affirmation stating that the terms of the order have been complied with, and affidavit of service of the affirmation and note of issue shall be served and filed with the note of issue on or before said date.

FAILURE TO COMPLY WITH ANY OF THESE DIRECTIVES MAY RESULT IN THE IMPOSITION OF COSTS OR SANCTIONS OR OTHER ACTION AUTHORIZED BY LAW. DATES SET FORTH HEREIN MAY NOT BE ADJOURNED EXCEPT WITH ADVANCE APPROVAL OF THE COURT.

SO ORDERED:

Dated: _____

_____, J.S.C.
HON. LISA S. HEADLEY

ADDITIONAL DIRECTIVES

In addition to the directives set forth above, it is further ORDERED as follows:

SO ORDERED:

Dated: _____

_____, J.S.C.
HON. LISA S. HEADLEY