SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

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DANIEL NEUMANN

Plaintiff,

- v -

RUBEN O. GARCIA,

Defendant.

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INDEX NO. 653730/2022

MOTION DATE

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 49-72 were read on this motion to/for VACATE.

Defendant's motion to vacate the judgment and two motion decisions is granted.

Background

This case concerns a purported $75,000 loan extended by plaintiff to defendant in 2018; defendant claims it was a gift. The parties agree that the terms of the alleged loan were never reduced to a writing.

The parties were married at the time of the transaction and obtained a judgment of divorce in 2020. Both parties agree that the $75,000 was not specifically mentioned in the parties' agreement in the matrimonial action. Instead, the parties disagree about whether this money was a loan or a gift and whether the settlement agreement encompasses the $75,000.

Previously, this Court granted two motions by plaintiff for summary judgment without opposition and plaintiff subsequently obtained a judgment. Defendant now moves to vacate on the ground that he thought his former attorneys were actively opposing these motions but they never actually uploaded any opposition.

Defendant includes his own affidavit in which he details his many communications with his former lawyers (NYSCEF Doc. No. 49). He argues that he now has new attorneys who informed him about the Court's decisions and wants a chance to defend this case on the merits. Defendant argues that the $75,000 was a gift, not a loan, and that he and plaintiff fully adjudicated their financial disputes as part of the divorce proceeding. He concludes that plaintiff never sought reimbursement for this money during the divorce proceeding and is not entitled to seek it here.

Also included in the moving papers is an affidavit from the managing partner of defendant's former law firm, who claims that this matter was handled by an attorney at the firm who never filed the opposition papers despite repeatedly assuring other members at the firm that he was handling the case. The partner details how he spoke with this attorney about the aforementioned motions and assumed that this attorney would oppose those motions.

In opposition, plaintiff insists that defendant failed to cite a reasonable excuse or a meritorious defense. He complains that there is no affidavit included from the handling attorney who failed to oppose the motions about why he failed to do so and plaintiff insists that the conduct was willful. Plaintiff argues that multiple people at defendant's former attorneys' firm received notifications about this case and nevertheless failed to oppose the two summary judgment motions. He argues that he has suffered significant prejudice by expending resources to make the previous motions and to obtain a judgment. Plaintiff argues that defendant failed to raise a meritorious defense because defendant admits that he received the $75,000 and never intended to repay this amount. He insists that the money was for construction to be performed on defendant's apartment in Buenos Aires.

In reply, defendant asserts that he has raised a reasonable excuse for not opposing the summary judgment motions and insists that any delay in this case does not constitute significant prejudice towards plaintiff. He also insists that he 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.*, 203 AD3d 401, 401, 160 NYS3d 590 (Mem) [1st Dept 2022]).

Reasonable Excuse

Defendant satisfied his burden to show a reasonable excuse for his default. He sufficiently demonstrated in his affidavit that he was actively involved in defending this case and that law office failure led to plaintiff obtaining a judgment without opposition.

The affidavits from the managing partner at the former firm (NYSCEF Doc. Nos. 52 and 66) show that this case was assigned to an experienced attorney at the firm and, for some reason, no opposition was ever uploaded. That shows clear law office failure.[1] That the attorney who was assigned the case (and later left this law office) did not submit an affidavit is of no moment and, of course, is no surprise. The managing partner's concern for his former client and willingness to step up and explain the firm's failure is admirable and all too rare. Besides, the managing partner is certainly entitled to expound upon the circumstances surrounding the failure to oppose plaintiff's motions in the absence of the handling attorney.

Moreover, the fact is that "[t]his 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]). Here, only a few weeks passed between the Court's decision granting the second motion

[1] The Court makes no affirmative findings of fact about who is at fault for this failure as the Court only has an account from the managing partner and not from the attorney who was originally assigned to handle the case.

for summary judgment and the instant order to show cause. Plaintiff did not suffer any demonstrable prejudice during this brief period, and the second motion was only necessary because the first motion did not get plaintiff what he wanted – even though it was without opposition. The necessity of making the second motion was plaintiff's doing, not defendant's.

In any event, the fact is that sometimes mistakes happen; this time, defendant's former counsel admits that an attorney he supervised made a mistake. This Court finds the mistake to constitute excusable law office failure. And it is certainly not the type of situation in which the client—defendant—should be forced to pay judgment of over $100,000 without having a chance to raise a defense.

Whether or not the failure to oppose by the former handling attorney was neglect, intentional or part of some internal dispute within the law firm has no bearing on this motion. The Court's focus is on defendant's reasonable excuse, which is that his previous law firm failed to submit opposition.

Meritorious Defense

The Court also finds that defendant raised a meritorious defense. The judgment of divorce clearly states that the divorce was pursuant to Domestic Relations Law § 170(7) and that the parties resolved "all financial issues including, but not limited to, equitable distribution of both marital and separate property and related issues" (NYSCEF Doc. No. 31). And so according to the judgment of divorce, all financial issues between the parties are resolved.

Defendant also points to the stipulation of settlement in the divorce proceeding (NYSCEF Doc. No. 30). The stipulation of settlement contains clauses that raise questions about whether plaintiff can pursue his claims here (although the Court makes no affirmative finding as

defendant did not move for dispositive relief on the merits). For instance, defendant points to a division of property clause that provides that "The parties intend that their real and personal property division, as provided in this Agreement, shall be final and irrevocable" (NYSCEF Doc. No. 30 at 13). A paragraph in the "Recitals" section states that "the parties desire to confirm their separation and to fix their respective financial and property rights, and all their rights, privileges and obligations with respect to each other arising out of the marital relationship and otherwise" (*id*. at 3). These two clauses justify vacating the judgment as they support defendant's claim that the divorce judgment (which incorporated the settlement agreement) resolved all disputes between the parties.

Plaintiff's assertion that the stipulation of settlement purposefully did not contain a typical general release clause because of the disputed $75,000 is not a basis to deny the instant motion because the settlement agreement did not specifically identify this money and the judgment of divorce says that all financial issues have been resolved. The Court cannot leap to the conclusion suggested by plaintiff—that the failure to include a general release clause is dispositive proof that defendant has to repay the $75,000—on these papers. In other words, on a motion to vacate, defendant need not rebut plaintiff's claims as a matter of law. He must only state a meritorious defense. And he has stated a meritorious defense here.

Plaintiff's assertion that defendant admitted (through an email from his attorney) that he owed the $75,000 is not a basis to deny the instant motion either. Plaintiff cannot, at least on this motion, rely upon an assertions made by defendant's attorney during the course of settlement discussions for the divorce case. The alleged admission was not contained in a court filing, such as a pleading, nor was it made on the record before a judge. While plaintiff is certainly correct that a party might hypothetically be bound by certain statements under CPLR 4549, the Court

cannot find that an email from defendant's attorney about a settlement issue that was then *not* included in the parties' subsequent settlement agreement is somehow a binding admission. Surely, no attorney expects that emails sent during settlement negotiations could later constitute binding admissions by their clients.

While plaintiff claims that various emails constitute a binding admission, this Court finds that they do not. Plaintiff's argument that defendant (in these emails) did not deny owing the $75,000 certainly is a far cry from an *affirmative* admission sufficient to deny the instant motion. Moreover, at least one email chain relied upon by plaintiff (NYSCEF Doc. No. 19) is dated in June 2019, a full year *before* the divorce judgment was signed and six months *before* the stipulation of settlement for the divorce proceeding was executed. In June 2019, plaintiff was demanding several items in addition to the $75,000 and defendant, who was clearly stressed because he moved to Florida for a new job and there were bureaucratic delays concerning a license issue that caused him to pay rent and wait, did not admit or deny any of the items – he only said he would pay back what he owed when he got back on his feet (*id.*).

At this stage of the litigation, it is unknown whether some time during the next year, the parties decided to resolve all of their financial issues before the divorce, as reflected in the judgment of divorce. It is also possible in the six months before signing the stipulation of settlement, in which defendant waived spousal support to the tune of about $40,000/year, that plaintiff's claims were dropped; certainly, none of the alleged debts were specifically preserved in the settlement or the judgment. As for the other email chain, dated after the divorce filing (NYSCEF Doc. No. 20), it does not contain any admission from defendant whatsoever.

And plaintiff's reference to a draft settlement agreement that specifically mentioned the $75,000 (NYSCEF Doc. No. 24 at 16) does not compel the Court to deny the instant motion as

that amount was not included in the final, executed agreement. The final settlement contains a merger clause, which provides that "This Agreement contains the entire understanding of the parties who hereby acknowledge that there have been and are no agreements, representations, warranties, covenants or undertakings other than those expressly set forth herein. This Agreement may be executed in counterparts, each of which shall be deemed an original and shall constitute one and the same Agreement" (NYSCEF Doc. No. 30).

Summary

The instant motion involves a classic case of law office failure; unbeknownst to the available and participating client, the attorney failed to upload timely opposition. And here, defendant's new attorney promptly moved to vacate. There is no reason to prohibit defendant from defending this case on the merits under these circumstances.

And defendant raised a meritorious defense by pointing to the divorce proceeding where, clearly, this issue should have been handled given that the $75,000 was transferred well before the divorce proceeding was commenced. For whatever reason, the parties did not specifically include it in their final settlement agreement or seek the instant relief in their matrimonial proceeding. Instead, the issue seems to have been dropped by the final stipulation of settlement where defendant waived spousal support (even though it seems plaintiff earned almost ten times what defendant earned). Moreover, quite tellingly, the judgment of divorce, drafted by plaintiff's counsel, declares that all financial issues between the parties have been resolved (NYSCEF Doc. No. 31 at 1).

The Court is unable, at least on a motion to vacate, to find that the extrinsic evidence submitted by plaintiff negates defendant's claimed meritorious defense. To be clear, nothing prevents either party from making a future dispositive motion.

The Court also denies plaintiff's request that defendant post an undertaking and pay plaintiff's legal fees. As noted above, there are legitimate issues about whether or not the parties' agreement in their matrimonial dispute forecloses plaintiff's right to seek recovery here. The Court, therefore, in its discretion, declines to make defendant post an undertaking. And plaintiff did not cite a sufficient basis to make defendant pay his legal fees.

Accordingly, it is hereby

ORDERED that defendant's motion to vacate is granted and the judgment (NYSCEF Doc. No. 47) and the Court's decisions (NYSCEF Doc. Nos. 40 and 33) are hereby vacated and this case shall be restored to the active calendar; and it is further

ORDERED that defendant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office; 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); and it is further] and upon such service, the Clerk shall immediately restore this case to the active calendar.

Conference: January 29, 2024 at 10 a.m.

By January 22, 2024, the parties shall upload 1) a stipulation about discovery signed by all parties, 2) a stipulation of partial agreement that identifies the areas in dispute or 3) letters explaining why no agreement about discovery could be reached. The Court will then assess

whether a conference is necessary (i.e., if the parties agree, then an in-person conference may not be required). If nothing is uploaded by January 22, 2024, the Court will adjourn the conference or may order a note of issue be filed.

9/27/2023
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE