

**69 Second Ave. LLC v Vanessa Realty Corp.**

2023 NY Slip Op 34283(U)

December 8, 2023

Supreme Court, New York County

Docket Number: Index No. 652395/2023

Judge: Debra A. James

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. DEBRA A. JAMES**

**PART 59**

*Justice*

-----X

69 SECOND AVENUE LLC,

Plaintiff,

- v -

VANESSA REALTY CORP. and SHLOMO MISHKIT,

Defendants.

-----X

**INDEX NO.** 652395/2023

**MOTION DATE** 12/06/2023

**MOTION SEQ. NO.** 001

**ORDER –  
RESETTLED/CORRECTED  
AMENDED (MOTION RELATED)**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32

were read on this motion to/for JUDGMENT - DEFAULT.

ORDER

Upon the foregoing documents, it is

ORDERED that the Order of December 8, 2023, resolving motion sequence 001 in this action is VACATED, RESETTLED, AND CORRECTED pursuant to CPLR § 5019(a) [see Kiker v Nassau County, 85 NY2d 879 (1995)] as follows:

ORDER

Upon the foregoing documents, it is

ORDERED that the cross motion of defendant SHLOMO MISHKIT to dismiss the complaint pursuant to CPLR 3211(a)(4) is DENIED, as premature, with leave to either side to move with respect to such affirmative defense alleged in defendant Mishkit's Answer; and it is further

ORDERED that to the extent that it seeks a default judgment against VANESSA REALTY CORP, the motion of plaintiff is GRANTED, without opposition; and it is further

ORDERED that defendant VANESSA REALTY CORP is liable on the complaint alleging fraudulent conveyance and an inquest on damages shall take place upon the disposition of this action against the remaining defendant; and it is further

ORDERED that plaintiff shall file a note of issue and certificate of readiness for the foregoing inquest and pay the proper fees to place this action on the appropriate trial calendar for such assessment, within thirty (30) days of the disposition against the remaining defendant; and it is further

ORDERED that to the extent that it seeks a default judgment against defendant SHLOMO MISHKIT, the motion of plaintiff is DENIED; and it is further

ORDERED that plaintiff is directed to accept the Answer of defendant SHLOMO MISHKIT filed on August 29, 2023 (NYSCEE Document No 15); and it is further

ORDERED that plaintiff shall file a Reply to the counterclaim interposed in such Answer, within thirty (30) days of service of a copy of this Order with notice of entry; and it is further

ORDERED that counsel are directed to post on NYSCEF a proposed preliminary discovery conference order or competing preliminary discovery conference order(s) at least two days before February 1,

2024, on which date counsel shall appear via Microsoft Teams, unless such appearance be waived by the court.

DECISION

This court rejects plaintiff's argument that service of process on a person abroad under the Hague Convention does not implicate the proof of service requirements of CPLR § 308(2).

Article 6 of the Hague Convention provides, in part, that the Central Authority shall complete a certificate in the form of the model annexed to the present Convention, and the "certificate shall state that the document has been served and shall include the method, the place and the date of service and the person to whom the document was delivered." The affidavits of service originally filed in this action did not indicate on what day the summons and complaint were served. Plaintiffs subsequently filed unsworn affidavits of service, which contained the date, but did not explain the change in the affidavits. Plaintiffs never submitted any certificate.

Marcus v Five J Jewelers Precious Metals Industry Ltd, 2002 NY Slip Op 50269(U), \*2 (Sup Court, NY Co, Ramos, J.) Therefore, defendant Mishkit's Answer, which was served a mere seven days after plaintiff filed proof of service, was timely.

An evidentiary hearing is required with respect to damages

to be assessed on the fraudulent conveyance claim(s) against defaulting defendant Vanessa Realty Corp. See Gutierrez v Bernard, 267 AD2d 65 (1<sup>st</sup> Dept 1999).

*Debra A. James*

20231208172041DJAMESCC008880566C41C7A8FF9FB8481B36AF

12/8/2023

DATE

DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE