

Elizon DB Transfer Agent LLC v 1711 E. 15 St. LLC

2023 NY Slip Op 34480(U)

December 20, 2023

Supreme Court, Kings County

Docket Number: Index No. 512350/2022

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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ELIZON DB TRANSFER AGENT LLC,

Plaintiff, Decision and order

- against -

Index No. 512350/2022

1711 EAST 15 STREET LLC, BENZION EISENBERG, SPRINGLAND ENTERPRISES, LLC, MR. SUPER INC., NEW YORK CITY PARKING VIOLATIONS BUREAU, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, NEW YORK CITY TRANSIT AUTHORITY TRANSIT ADJUDICATION BUREAU, NEW YORK CITY DEPARTMENT OF FINANCE, AND NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, JEAN "DOE" (REFUSED LAST NAME) SERVED HEREIN AS "JOHN DOE" #1, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #2, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #3, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #4, "JANE DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #5, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #6, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #7, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #8, BARBARA "DOE" (REFUSED LAST NAME) SERVED HEREIN AS "JOHN DOE" #9, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #10, DIAMOND "DOE" (REFUSED LAST NAME) SERVED HEREIN AS "JOHN DOE" #11, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #12, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #13, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #14, IANA "DOE" (REFUSED LAST NAME) SERVED HEREIN AS "JOHN DOE" #15, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #16, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #17, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #18, "JANE DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #19, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #20, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #21, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #22, VICTORIA "DOE" (REFUSED LAST NAME) SERVED HEREIN AS "JOHN DOE" #23, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #24, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #25, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #26, JENELL "DOE" (REFUSED LAST NAME) SERVED HEREIN AS "JOHN DOE" #27, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #28, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #29, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #30, "JANE, DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #31, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #32, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN

DOE" #33, MIA "DOE" (REFUSED LAST NAME) SERVED HEREIN AS "JOHN DOE" #34, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #35, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #36, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #37, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #38, "JANE DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #39, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #40, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #41, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #42, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #43, "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #44, AND "JOHN DOE" (REFUSED NAME) SERVED HEREIN AS "JOHN DOE" #45,

Defendants,

December 20, 2023

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #5

The plaintiff has moved seeking to extend the time in which to file a note of issue. The defendant opposes the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As recorded in a prior decision, on July 21, 2020, the plaintiff loaned the defendant 1711 East 15 Street LLC five million dollars. The loan was secured by a mortgage on real property located at 1711 East 15th Street in Kings County. Further, the defendant Eisenberg executed a promissory note to the plaintiff in the amount of \$5,000,000. The defendant was required to make monthly interest only payments until July 2021 when the entire amount was due. The defendant failed to make any interest payments from April 2021 and failed to return the five million dollars loaned.

The plaintiff instituted this lawsuit seeking to foreclose on the above noted property. The court granted the plaintiff's motion seeking summary judgement on the grounds there were no questions of fact the money was owed. Further, the court appointed a referee to compute the amount due to plaintiff and to issue a report within sixty days of the order of reference. Further, the court appointed a receiver to manage the property. Indeed, the court issued a contempt order finding the defendants were impeding the receiver's work. The receiver only gained full access to the property over a year after the appointment. The receiver's appraisal report which would inform the worth of defendant's shares was completed on September 27, 2023. The plaintiff now moves seeking to extend the time in which to file a note of issue so that the referee can complete his report. As noted the motion is opposed.

Conclusions of Law

Concerning the note of issue, CPLR §2004 provides that "except where otherwise expressly prescribed by law, the court may extend the time fixed by any statute, rule or order for doing any act, upon such terms as may be just and upon good cause shown, whether the application for extension is made before or after the expiration of the time fixed" (id). The court maintains broad discretion whether such an extension should be

granted (see, Carota v. Massapequa Union Free School District, 272 AD2d 428, 708 NYS2d 340 [2d Dept., 2000]). When considering a request to extend the time to file a note of issue, the court should consider the length of the delay in making the application, the reason for the delay, and any prejudice to be caused to the opposing party (Oliver v. Town of Hempstead, 68 AD2d 1079, 891 NYS2d 456 [2d Dept., 2009]). However, for this analysis to even begin the defendant must have filed a ninety day notice or the court must have issued an order warning the failure to file the note of issue could result in a dismissal of the action (Huger v. Cushman and Wakefield Inc., 58 AD3d 682, 871 NYS2d 669 [2d Dept., 2009]).

In this case a ninety day notice was not served and the court never issued an order in this regard. Further, the basis for the delay, the need to complete the referee report, is a reasonable excuse. The defendant argues the delay was not reasonable and that the report contains inadmissible hearsay. There is absolutely no merit to those objections. To the extent those objections may be raised at the appropriate time, they are surely not a basis to oppose extending the filing of the note of issue. Moreover, there is no prejudice to the defendants by granting this extension.


Therefore, based on the foregoing, the motion seeking to extend the time in which to file the note of issue is granted.

The note of issue must be filed within sixty days following the completion of all reports prepared by the referee.

So ordered.

ENTER:

DATED: December 20, 2023
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC