

Hamilton v 208-214 E 25th St LLC

2024 NY Slip Op 30137(U)

January 11, 2024

Supreme Court, New York County

Docket Number: Index No. 154246/2021

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12

Justice

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REILLY HELEN HAMILTON	INDEX NO. <u>154246/2021</u>
Plaintiff,	MOTION DATE <u>09/19/2023</u>
208-214 E 25TH ST LLC,	MOTION SEQ. NO. <u>005</u>

- v -

208-214 E 25TH ST LLC,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

This action arises out of a fall sustained by plaintiff Reilly Helen Hamilton (plaintiff) from the roof at 214 East 25th Street, New York City, New York (the premises), on May 4, 2019. Plaintiff brought a claim for negligence against defendant 208-214 E 25th Street LLC (defendant), who was the landlord of the premises, to recover for personal injuries.

I. Procedural History

Plaintiff filed her summons and complaint on April 30, 2021 and served defendant via the address listed for defendant with the Secretary of State, pursuant to Business Corporation Law § 306. *See* NYSCEF doc. no. 1, Complaint; *see also* NYSCEF doc. no. 13, Affidavit of Service. On July 29, 2022, Justice Barbara Jaffe held defendant in default for failure to file an answer, failure to file a notice of appearance, and for failure to make any motions raising any defense or objection to the complaint before its time to answer or move had expired. Justice Jaffe directed a trial on liability and damages. *See* NYSCEF doc. no. 35, Decision and Order on Motion #004.

Defendant moves for an order vacating the default judgement entered against it pursuant to CPLR 317, or, in the alternative, pursuant to CPLR 5015. Plaintiff opposes the motion.

II. Analysis

Pursuant to CPLR 3215,

...when a default judgment based upon non-appearance is sought against a domestic or authorized foreign corporation which has been served pursuant to paragraph (b) of section three hundred six of the business corporation law, an affidavit shall be submitted that an additional service of the summons by first class mail has been made upon the defendant corporation at its last known address at least twenty days before the entry of judgment.

Additionally, pursuant to CPLR 317, a defaulting defendant who was served with a summons other than by personal delivery may be permitted to defend the action upon a finding by the Court that the defendant did not personally receive notice of the summons in time to defend and has a potentially meritorious defense.

Defendant argues that it never received any communications or court filings regarding this matter. It submits an affidavit of its managing member Steven Cronman, in which Mr. Cronman attests that defendant only discovered the lawsuit upon a title search for the building. *See* NYSCEF doc. no. 40, Cronman Affidavit. He also submits that defendant moved to vacate the default shortly thereafter. *Id.* Mr. Cronman acknowledges that the address on file with the Secretary of State, of which he was served, was incorrect, but that the correct address, 140 Broadway, Second Floor, New York, NY, 10003, was included properly in the controlling lease between plaintiff and defendant. *Id.*; *See also* NYSCEF doc. no. 41, Lease Agreement. Additionally, defendant argues that it has a meritorious defense because plaintiff did not have permitted access to the roof deck at the premises, and defendant never received complaints about the deck prior to plaintiff's accident.

Plaintiff's opposition is unavailing. Although plaintiff did properly serve defendant via the Secretary of State, such service does not negate defendant's right to relief pursuant to CPLR 317. Defendant establishes that it was served via the Secretary of State and did not receive personal

notice of the claim. Defendant has also demonstrated a potentially meritorious defense. Therefore, defendant is entitled to vacatur pursuant to CPLR 317.

Furthermore, plaintiff's position that defendant willfully ignored the pendency of this action is inapposite. Although defendant admits it listed an incorrect address with the Secretary of State, such mistake is not so egregious as to raise an inference of a deliberate attempt to avoid service of process. *Compare Bookman v 816 Belmont Realty, LLC*, 180 AD3d 986, 987 (2d Dept 2020).

Moreover, as the address listed with the Secretary of State was different from the updated address on the lease agreement between plaintiff and defendant, plaintiff knew or should have known that the "last known address" of defendant was that which was contained in the lease agreement, despite defendant providing a different address to the Secretary of State. Improper filing is not sufficient to succeed on a default judgment claim and preclude an opposing party from relief pursuant to CPLR 317. *See also Eugene DiLorenzo, Inc. v. A.C. Dutton Lumber Co., Inc.*, 67 N.Y.2d 138, 492 N.E.2d 116 (1986); citing *Gray v. B.R. Trucking Co.*, 59 N.Y.2d 649, 650, 463 N.Y.S.2d 192, 449 N.E.2d 1270 (holding that a defendant may still be relieved from default on the ground of, among many others, "excusable default").

Also, pursuant to CPLR 317,

...a person served with a summons other than by personal delivery to him or to his agent for service designated under rule 318, within or without the state, who does not appear may be allowed to defend the action within one year after he obtains knowledge of entry of the judgment, but in no event more than five years after such entry, upon a finding of the court that he did not personally receive notice of the summons in time to defend and has a meritorious defense. If the defense is successful, the court may direct and enforce restitution in the same manner and subject to the same conditions as where a judgment is reversed or modified on appeal.

In fact, several courts have held that service of process with the secretary of state is not “personal delivery” or to an agent under CPLR 317. *See Taieb v Hilton Hotels Corp.*, 60 NY2d 725 (1983); *see also Cecelia v Colonial Sand & Stone Co.*, 85 AD2d 56, 57 (1982).

As such, corporate defendants served under Business Corporation Law § 306, as here, have frequently obtained relief from default judgments where they had a wrong address on file with the Secretary of State, and consequently, did not receive actual notice of the action in time to defend. *See Union Indem. Ins. Co. v. 10-01 50th Ave. Realty Corp.*, 102 AD2d 727 (1984); *see also Meyer v Fisher & Sons Dental Lab.*, 90 AD2d 889 (1982). The First Department extended and has held that “(1) the fact that the wrong address was used for service of process was a reasonable excuse for the owner's default, and (2) store owner established a meritorious defense to purported store patron’s personal injury action.” *Caesar v Harlem USA Stores, Inc.*, 150 AD3d 524 (2017).

A default judgment was entered against defendant on July 29, 2022. Defendant timely brought the instant motion to vacate the default judgment on September 1, 2022, pursuant to CPLR 5015 and CPLR 317. Therefore, it is apparent that defendant was not careless or delayed in bringing forth the present action, and is therefore entitled to relief as it moved timely and presents a meritorious defense.

Additionally, the Court notes that the CPLR 3215 (g) notice sent to defendant in support of plaintiff’s motion for a default judgment was sent to the incorrect address listed with the Secretary of State and not defendant’s proper service address as per the controlling lease.

III. Conclusion

Accordingly, it is hereby

ORDERED that defendant 208-214 E 25th Street LLC’s motion to vacate the default judgment is granted; and it is further

ORDERED that defendant is to serve and file an answer within 30 days of this Decision and Order.

The foregoing constitutes the decision and order of the Court.


LESLIE A. STROTH, J.S.C.

1/11/2024
DATE

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