

Diamond Realty Mgt., LLC v Kameo

2024 NY Slip Op 31845(U)

May 23, 2024

Supreme Court, New York County

Docket Number: Index No. 655258/2016

Judge: Debra A. James

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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. DEBRA A. JAMES

PART 59

Justice

-----X

DIAMOND REALTY MANAGEMENT, LLC, and 66 W. 47TH ST., LLC,

Plaintiffs,

INDEX NO. 655258/2016

MOTION DATE 09/23/2019

MOTION SEQ. NO. 004

- v -

EMIL KAMEO, and EMIL KAMEO D/B/A EMIL'S JEWELERS,

Defendants.

**INTERIM DECISION + ORDER
ON MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 76, 78, 80

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

ORDER

Upon the foregoing documents, it is

ORDERED to the extent of setting the matter down for a new inquest on damages, the motion pursuant to CPLR § 5015(a)(1) of defendants to vacate the default judgment filed on September 10, 2018 (motion sequence number 004) is granted; and it is further

ORDERED that the judgment filed on September 10, 2018 shall stand as security pending final disposition of the new inquest hearing; and it is further;

ORDERED, that this matter having come on before this court on September 23, 2019, on motion of the defendants to vacate a default judgment, and the plaintiff(s) having appeared by Alfred E. Smith, Esq., and the defendant(s) having appeared by

Morris Fateha, Esq., and, pursuant to CPLR 4317, the court having on its own motion determined to consider the appointment of a referee to hear and report on an issue of damages separately triable and not requiring a trial by jury is involved, it is now hereby

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to hear and report to this court on the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

- (1) the issue of unpaid rent and additional rent;
- (2) the issue of interest on unpaid rent and additional rent;
- (3) the issue of the reasonable value of attorneys' fees and disbursements incurred by plaintiffs in prosecuting the herein action;

and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR;

and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court), shall assign this matter at the initial

appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff shall, within thirty (30) days from the date of this Order, submit to the Special Referee Clerk by e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules); and it is further

ORDERED that, unless otherwise directed by this court in any Order that may be issued together with this Order of Reference to Hear and Report, the issues presented in any motion identified in the first paragraph hereof shall be held in abeyance pending submission of the Report of the JHO/Special Referee and the determination of this court thereon; and it is further

Counsel shall appear for oral argument via Microsoft Teams on the motion to vacate the default judgment on September 17, 2023, upon the issuance of the Special Referee Inquest Report, and such date may be advanced at the discretion of the court should such Report be issued before such date.

DECISION

Defendant Emil Kameo states that his excuse for failing to oppose the motion to confirm the Special Referee Report that determined that service upon the defendants was proper (motion sequence number 003) was that he was disabled, and underwent surgery and recovery during that time. Such excuse is unreasonable as there is no explanation why his counsel, who

appeared for defendants on January 4, 2017, failed to submit any papers at all, such as a statement setting forth his client's disability, at the time responsive papers were due in November 2018.

Defense counselor's mis-calendaring of the July 31, 2018 date and time of the inquest hearing, as law office failure, constitutes a justifiable excuse. See De Benedictis v Rahbar, 269 AD2d 134 (1st Dept 2000). Likewise, defendants proffer a meritorious defense as to the amount of damages determined at inquest in the form of the reference in the complaint at bar to "Plaintiffs [having been] caused to commence [a prior action], which resulting in judgment of eviction in favor of Plaintiffs on August 26, 2016." (NYSCEF Document Number 001, ¶ 14).

The judgment herein shall stand as security pending resolution of the new inquest hearing. See Ackerson v Stragmaglia, 176 AD2d 602 (1st Dept 1991).

Debra A. James

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<u>5/23/2024</u>			
DATE		DEBRA A. JAMES, J.S.C.	
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input checked="" type="checkbox"/> REFERENCE
	<input type="checkbox"/> DENIED		