

Gonzalez v Grove House Inc.

2024 NY Slip Op 32042(U)

June 17, 2024

Supreme Court, New York County

Docket Number: Index No. 153665/2022

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33

Justice

-----X

MARIA DORA GONZALEZ

Plaintiff,

- v -

GROVE HOUSE INC.,

Defendant.

-----X

INDEX NO. 153665/2022
MOTION DATE 03/16/2024
MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59 were read on this motion to/for MISCELLANEOUS.

Upon the foregoing documents, Defendant Grove House Inc.'s ("Defendant") motion seeking to vacate this Court's order granting default judgment against it is denied.

A. Background

This Court granted Plaintiff's motion to enter default judgment on February 7, 2023 (NYSCEF Doc. 12). The note of issue was filed on February 13, 2023 (NYSCEF Doc. 15). Plaintiff received a notification from the Court inquiring into Plaintiff's availability for an inquest on July 5, 2023 (NYSCEF Doc. 18). Defendant had retained an attorney and knew about the entry of default since at least May 9, 2023 (*see* NYSCEF Doc. 56). Moreover, all mail providing multiple notices of default was sent to Defendant's address kept on file with the Secretary of State, and Defendant did indeed receive notice of default from mail delivered to that address (NYSCEF Doc. 27 at ¶ 8). Nonetheless, Defendant waited until September of 2023 to file the instant motion seeking to vacate the default judgment entered against it (NYSCEF Doc. 32).

B. Discussion

To successfully vacate an order granting default judgment, a defendant must demonstrate both a reasonable excuse for the default and a meritorious defense to plaintiff's claims (*Genao v Salcedo Maintenance Corp*, 168 AD3d 528. 528-529 [1st Dept 2019]). Whether a defendant demonstrates a reasonable excuse for default and a meritorious defense is within the discretion of the Court (*Oberon Securities v Parmar*, 135 AD3d 446 [1st Dept 2016]).

The First Department, in reversing an order vacating default, has held that a defendant failed to establish a reasonable excuse where papers were properly served on the Secretary of State as the defendant's agent, and the failure to keep a current address on file was not a reasonable excuse (*San-Dar Associates v Corporate Habitat NY, LLC*, 226 AD3d 525 [1st Dept 2024]; *see also Castillo v 2460 Tiebout Avenue Associates, LLC*, 209 AD3d 518 [1st Dept 2022]). Just as in *San-Dar*, where the Defendant did have actual notice, they waited over three months to take any steps to vacate the default which was "not excusable" (*Eretz Funding, Ltd. v Shalosh Associates*, 266 AD2d 184 [1st Dept 1999]).

Here, Defendant concedes that it failed to update its address with the Secretary of State and that notices were sent to the address on file with the Secretary of State. Moreover, there is evidence that Defendant retained an attorney as of May 2023 and knew about the default, and had even been in contact with Plaintiff's attorney regarding settlement, yet failed to take any steps to address the default until September of 2023. Pursuant to a multitude of First Department precedent, this behavior does not give rise to a reasonable excuse sufficient to vacate a default (*see also Crespo v A.D.A. Mgmt.*, 292 AD2d 5, 9 [1st Dept 2002]).

As such, the Court finds that Defendants have failed to proffer any reasonable excuse for their default, and therefore the Court need not reach whether or not Defendants have a meritorious

defense (*U.S. Bank Trust N.A. as Trustee for LSF9 Master Participation Trust v Rivera*, 187 AD3d 624, 625 [1st Dept 2020] quoting *Citibank, N.A. v K.L.P. Sportswear, Inc.*, 144 AD3d 475, 476-77 [1st Dept 2016] [“Absent a reasonable excuse, vacatur is not appropriate regardless of whether defendant has a meritorious defense”]).¹

Accordingly, it is hereby,

ORDERED that Defendant’s motion to vacate their default herein is denied; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on Defendant; and it is further

ORDERED that the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), is directed to place this action on the appropriate trial calendar for an inquest on damages against Defendant Grove House Inc.; and it is further

ORDERED that the inquest shall determine Plaintiff’s damages against Grove House on her first and second causes of action alleging wrongful termination based on age discrimination in violation of New York and Federal law, third and fourth causes of action alleged sex discrimination based on New York State law, fifth cause of action for conversion, sixth cause of action for wrongful eviction, and seventh and eight causes of action alleging underpayment of wages in violation of New York State and Federal law; and it is further

¹ Defendant raised, for the first time on reply, that there was further delay in moving to vacate default due to issues obtaining insurance through Defendant’s carrier. Defendant provides no reason why this was not included in the original motion papers and they are improperly raised for the first time on reply (*Erdey v City of New York*, 129 AD3d 546 [1st Dept 2015]; *Rhodes v City of New York*, 88 AD3d 614, 615 [1st Dept 2011]; *Givoldi, Inc. v United Parcel Service*, 286 AD2d 220 [1st Dept 2001]). In any event, where Defendant had retained personal counsel, and given Defendant could have retained insurance defense counsel in a timely manner had it maintained a correct address with the Secretary of State, this is insufficient to provide a reasonable excuse to vacate default.

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

6/17/2024
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

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