

**Hunter Roberts Constr. Group, LLC v Vector
Structural Preserv. Corp.**

2024 NY Slip Op 32391(U)

July 2, 2024

Supreme Court, New York County

Docket Number: Index No. 653847/2019

Judge: Emily Morales-Minerva

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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. EMILY MORALES-MINERVA PART 42M

Justice

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HUNTER ROBERTS CONSTRUCTION GROUP, LLC,

Plaintiff,

INDEX NO. 653847/2019

MOTION DATE 05/08/2024

MOTION SEQ. NO. 011

- v -

VECTOR STRUCTURAL PRESERVATION CORP., and
BILL HANDAKAS, a/k/a WILLIAM HANDAKAS, VASSILIOS
HANDAKAS and/or KONSTANTINOS HANDAKAS,

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 011) 360, 361, 362, 363, 364, 365, 366, 367

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

APPEARANCES:

Klehr, Harrison, Harvey & Branzburg LLP, Philadelphia, Pennsylvania (Gaetano P. Piccirilli, Esq., of counsel) for plaintiff.

Vassilios Handakas, *pro se.*

HON. EMILY MORALES-MINERVA:

On April 15, 2024, this court issued an order, finding defendants VECTOR STRUCTURAL PRESEVATION CORP., BILL HANDAKAS, VASSILIOS HANDAKAS, and KONSTANTINOS HANDAKAS in default, upon their failure to appear at a court-ordered status conference (see NY St Elec Filing [NYSCEF] Doc. No. 364, decision and order; see also Uniform Rules for the Supreme Court [22 NYCRR] § 202.27 [governing defaults]). The order severed and dismissed defendant

VECTOR STRUCTURAL PRESEVATION CORP.'s ("Vector") counterclaims, cancelled and discharged the mechanic's liens in this action, and directed an inquest on damages. Defendant BILL HANDAKAS, a/k/a WILLIAM HANDAKAS, VASSILIOS HANDAKAS and/or KONSANTINOS HANDAKAS ("Handakas"), the President of Vector, appearing self-represented, now moves to vacate the order on his own behalf and on behalf of Vector.¹

"A motion to vacate a dismissal for failure to appear at a scheduled court conference [22 NYCRR § 202.27] is governed by CPLR § 5015" (Donnelly v Treeline Cos., 66 AD3d 563, 564 [1st Dept 2009]). The motion must be "supported by a showing of reasonable excuse for the failure to attend the conference and a meritorious cause of action" (Id.; see Biton v Turco, 88 AD3d 519 [1st Dept 2011]). Whether or not to relieve a party from a judgment or order entered on default lies within the discretion of the court (see Deutsche Bank Natl. Trust Co. v Kirschenbaum, 179 AD3d 407 [1st Dept 2020]).

Here, Handakas contends that he did not attend the court-ordered status conference because defendants were not served with

¹The defendant named in the caption as "Bill Handakas a/k/a William Handakas, Vassilios Handakas and/or Konsantinos Handakas" identifies as "Vassilios Handakas" or "Bill Handakas a/k/a Vassilios Handakas." According to his deposition testimony, his father, Konstantinos Handakas, died in April 2021, and at the time of his death, owned 100 % of the stock in the corporation (see NYSCEF Doc. No. 365, Vassilios Handakas EBT at 59-60). However, since Konsantinos Handakas is not named as a co-defendant, but rather as one of the aliases used by Handakas, his death does not automatically stay the proceeding.

notice of the conference. In support of his motion, he submits his own affidavit wherein he attests that he is the President of Vector, was never notified of the conference, and that his mailing address is different from the address set forth in the affidavit of service (see NYSCEF Doc. No. 361, affidavit of Vassilios Handakas, dated April 22, 2024). With respect to Vector, the record is devoid of an affidavit of service demonstrating that Vector was served with the notice of the conference (Donnelly, 66 AD3d at 564 ["lack of receipt of notice can be a valid excuse for failure to appear at a conference"]). Further, there is no evidence in the record that defendants have "engaged in a pattern of dilatory conduct" (Navarro v Joy Constr. Corp., 209 AD3d 440, 441 [1st Dept 2022]). Therefore, the court finds that defendants demonstrated a reasonable excuse for their failure to appear at the court-ordered status conference.

Where the party moving to vacate its default demonstrates that it did not receive notice of a court conference, it must, nonetheless, demonstrate the potential merit of its claims or defenses (see Latha Rest. Corp. v Tower Ins. Co., 285 AD2d 437, [1st Dept 2001]; Donnelly, 66 AD3d at 564). "A verified pleading may be utilized as an affidavit whenever the latter is required [but] the verified pleading has evidentiary value only if the verifier has personal knowledge of the facts" (Jaime v City of New

York, 2024 WL 1200216 [N.Y. Mar. 21, 2024]; see JPMorgan Chase Bank, N.A. v Clancy, 117 AD3d 472 [1st Dept 2014]; CPLR § 105[u)].

In the instant matter, defendants' motion papers do not address the merits of the dismissed counterclaims. However, Vector's "Verified Answer to Amended Complaint with Counterclaims" (NYSCEF Doc. No. 156), which is verified by Handakas based on his personal knowledge as Vector's President, sufficiently sets forth the basis for Vector's counterclaims. A verified pleading is the equivalent of an affidavit and Handakas has personal knowledge of the facts (see CPLR § 105 [u] [providing, in full, "[a] 'verified pleading' may be utilized as an affidavit whenever the latter is required"])). Therefore, the court finds defendants have demonstrated the potential merit of its counterclaims.

Lastly, plaintiff contends that pursuant to CPLR § 321 [a], Vector, as a corporate party, must appear by an attorney to move to vacate its default, and because it did not do so, the motion must be denied. However, the court finds this argument unavailing. Pursuant to CPLR § 5015 (a), a motion to vacate may be made by "any interested person." In this regard, "all that is necessary is that some legitimate interest of the moving party will be served and that judicial assistance will avoid injustice" (Oppenheimer v Westcott, 47 NY2d 595, 602 [1979]). Handakas, appearing self-represented as Vector's President, has a legitimate interest in

this matter. Letting the order stand would be unjust given that neither Handakas nor Vector received notice of the conference.²

In light of the foregoing, as well as this state's "strong public policy to dispose of cases on their merits" (Mejia v Duran De La Rosa, 210 AD3d 506, 507 [1st Dept 2022]), the motion is granted.

Accordingly, it is hereby:

ORDERED that the motion to vacate the April 15, 2024 order is granted (Mot. Seq. No. 11) and the order is vacated;

ORDERED that the inquest scheduled for August 21, 2024 is vacated; and

ORDERED that the matter is scheduled for an in-person status conference on September 9, 2024 at 12:00 P.M. in Part 42.

This constitutes the decision and order of the court.

Notify parties.

7/2/2024
DATE

Emily Morales-Minerva
EMILY MORALES-MINERVA, J.S.C.

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

² The court notes that on June 6, 2024, Gayle A Rosen, of Rabinowitz, Galina & Rosen, filed a notice of appearance on Handakas' and Vector's behalf (NYSCEF Doc. No. 368).