

Safety & Quality Plus, Inc. v Battery Assoc. LLC

2025 NY Slip Op 31113(U)

March 26, 2025

Supreme Court, New York County

Docket Number: Index No. 650212/2024

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

-----X

SAFETY AND QUALITY PLUS, INC.,

Plaintiff,

- v -

BATTERY ASSOCIATES LLC,WINDMILL ENTERPRISES
LLC,WSK WASHINGTON STREET, LLC,MJK
WASHINGTON STREET, LLC,GWK WASHINGTON
STREET, LLC,90 WASHINGTON STREET, LLC,DKD 90
WASHINGTON, LLC,EKATZ FAMILY LLC,JDM
WASHINGTON STREET LLC,THE MOINIAN
DEVELOPMENT GROUP LLC A/K/A THE MOINIAN
GROUP, THE BANK OF NEW YORK, AS TRUSTEE, NEW
YORK CITY HOUSING DEVELOPMENT CORPORATION,
FANNIE MAE, SPRING SCAFFOLDING LLC,A.T.S.
MECHANICAL CONTRACTORS, INC.,GOTHAM REFINING
CHEMICAL CORP., CARDELLA TRUCKING CO.,
INC.,SWING STAGING, LLC,PHOENIX SUTTON STR.
INC.,THE PACE COMPANIES NEW YORK, LLC,LINK
RENOVATION, INC.,AMERICAN PIPE & TANK LINING
CO., INC.,INTERSYSTEMS INSTALLATION S&S CORP.,
SRCC CORP., JOHN DOES #1-10

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 41, 42, 43, 44, 45, 46, 47, 48, 49

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

**DECISION + ORDER ON
MOTION**

Defendants The Moinian Development Group LLC and Ekatz Family LLC (“Moving Defendants”)’s motion to vacate is granted in part as described below.

Background

Moving Defendants seek to vacate a Court decision that granted a motion by defendant Phoenix Sutton Str. Inc. (“Phoenix”) for a default judgment on its crossclaims against the Moving Defendants. Their attorney admits he missed the deadline to file a request for an

adjournment and insists that the initial return date fell on a Friday. Moving Defendants' attorney contends he sent an email to the Court after the motion was already marked submitted asking for an adjournment.

They assert that the motion should be vacated because no answer was required to the crossclaims as one was not specifically demanded. Moving Defendants maintain that under such circumstances these claims are deemed denied. They also seek sanctions and claim they told Phoenix that the motion lacked merit.

In opposition, Phoenix claims that the Moving Defendants have not met their burden to vacate the Court's order. It claims that the crossclaims had to be answered as they seek foreclosure of a mechanic's lien. Phoenix adds that "even if a reply is not formally required under CPLR 3011, the obligation to respond—whether by answer, motion, or appearance—is not excused when faced with such claims. Silence in the face of a demand for affirmative relief constitutes a default under CPLR 3215" (NYSCEF Doc. No. 48, ¶ 8).

The Court did not consider the Moving Defendants' improper request to file a reply.

Discussion

The Court grants the motion to vacate. As an initial matter, the Moving Defendants established a reasonable excuse for not timely responding to the motion through law office failure. They admit that their attorney simply missed the deadline—mistakes happen, and in this Court's view, cases should be decided on their merits. Moving Defendants brought an order to show cause quickly after the Court issued its decision.

Moving Defendants also established a meritorious defense, namely that the crossclaims were deemed denied.

“CPLR 3011 provides that there shall be an answer to a cross-claim that contains a demand for an answer and that if no demand is made, the cross-claim shall be deemed denied or avoided. The denial that is deemed by law to have been made occurs at the time that an answer to the cross claim would otherwise be due” (*Giglio v NTIMP, Inc.*, 86 AD3d 301, 310 [2d Dept 2011] [internal quotations and citations omitted]).

Here, the relevant pleading (NYSCEF Doc. No. 19) did not specifically demand an answer and Phoenix did not identify where it made such a demand. That constitutes a good reason to vacate the Court’s decision and to deem the crossclaims as denied. Phoenix’s assertion that the Moving Defendants should have responded even without a formal requirement to respond is not a reason to deny this motion or to make the Moving Defendants file a reply now.

However, the Court denies the Moving Defendants’ request for sanctions as wholly without merit. The fact is that Phoenix made a motion and the Moving Defendants ignored the deadline and attempted, after the motion was marked submitted, to get an adjournment. Moreover, the Moving Defendants did not seek an adjournment via NYSCEF and so the request was not properly brought to the Court’s attention prior to the Court issuing a decision. Simply sending off an email after a motion is already marked submitted is not sufficient, proper or appropriate.

In any event, nothing discussed above shows any sanctionable behavior by Phoenix. It made a motion, as it was entitled to do. Had the Moving Defendants opposed the motion on the merits and not sought to delay, then the motion would have been decided initially on the merits and Phoenix may well have lost – and losing a motion is not cause for sanctions. That the Court is now granting the instant motion by the Moving Defendants – who, by failing to timely oppose, caused extra work for Phoenix - does not somehow make Phoenix’s behavior sanctionable.

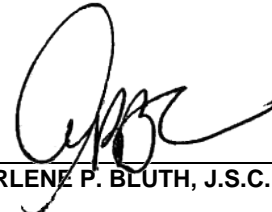
Accordingly, it is hereby

ORDERED that defendants the Moinian Development Group LLC and Ekatz Family LLC's motion is granted only to the extent that the Court's decision granting a default judgment against them is vacated and the allegations in Phoenix's crossclaims are deemed denied, and the remaining request for relief in this motion are denied.

See NYSCEF Doc. No. 37 concerning the next conference.

3/26/2025

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE