SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. KATHLEEN WATERMAN-MARSHALL** **PART** **31M**

Justice

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MARYAM NAGHAVI,

Plaintiff,

- v -

MARK DOUGLAS, MARK & YOLGIE BUILDERS LLC,CONSTRUCTION INTERIOR CITYWAY CORP., DANILO BOOKGUITY, DEON WALCOTT, MADETV LLC,FSL TRAINING, LLC,PRIME HOME BUYERS, LLC,PURSUIT REAL ESTATE MANAGEMENT, LLC,POPULAR DEMAND MANAGEMENT INC.,CYNTHIA HAYLETTS, BENJAMIN DREBIN, ACCURATE ELECTRIC CORP., ANDRZEJ MALYSZA, NEW YORK PARK PLUMBING AND HEATING CO., BANK OF AMERICA, N.A., JOHN DOE # 1 THROUGH JOHN DOE # 25,

Defendant.

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INDEX NO. 655518/2023

MOTION DATE 03/24/2025

MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 234, 235, 236, 237 were read on this motion to/for RESTORE TO TRIAL CALENDAR.

Upon the foregoing documents, the motion by plaintiff Maryam Naghavi ("Ms. Naghavi"), for an order, pursuant to CPLR 3404, vacating her default in appearing at a court conference and restoring this matter to the calendar, is denied on the merits and upon Ms. Naghavi's default in appearing in support of the motion. The motion was scheduled for in-person oral argument on July 22, 2025 but Ms. Naghavi failed to appear. She did not request an adjournment of the motion or otherwise reach to the Court to explain why she did not appear in support of her own motion.

Brief Background

This is a breach of contract action arising out of an agreement by certain of the defendants to perform renovation work at Ms. Naghavi's Manhattan apartment. Ms. Naghavi, a California resident and New York State admitted attorney, alleges that, at the suggestion of defendant Deon Walcott ("Mr. Walcott") (who was, allegedly, her personal trainer and friend), Ms. Naghavi hired defendant Mark Douglas ("Mr. Douglas") of Mark & Yolgie Builders, LLC ("M&Y") to renovate her newly purchased apartment. According to Ms. Naghavi, she signed a home improvement contract ("the Contract") and made an initial $25,000 deposit. The Contract lumped together Mr. Douglas, M&Y, and defendant Construction Interior Cityway Corp. ("Cityway") as the same business providing the renovation work. Ms. Naghavi made weekly installment payments during the renovation period.

However, Ms. Naghavi alleges that the renovation work was not completed and/or performed to plan or by licensed contractors; was delayed; materials were installed without her approval; and Mr. Douglas abandoned the project. She alleges that defendants misappropriated the money she paid under the Contract to renovate the property where M&Y is registered and which is owned by Mr. Douglas' relative,

defendant Cynthia Hayletts ("Ms. Hayletts"). She further contends that an employee of Cityway, defendant Danilo Bookguity ("Mr. Bookguity"), offered to finish the renovation work for the outstanding amount due on the Contract price. Ms. Naghavi also alleges that because Mr. Walcott has corporate entities "which appear to be in construction and/or real estate" and because he sent an email from one of those entities in his communication with Mr. Douglas, these Walcott entities are involved in a large fraudulent scheme to induce her to enter into the Contract. In addition to contract claims, Ms. Naghavi asserts tort-type claims in that, due to the stress attendant to the renovation project she had a car accident at some point (date unspecified) and on another day while traveling she threw up in an Uber cab and could not eat for that day.

In this regard, the amended complaint casts a wide net over 47 pages – Ms. Naghavi sued essentially anyone with whom she had contact regarding the renovation project. The amended complaint alleges causes of action for: breach of contract (against Mr. Douglas, M&Y, and Cityway); tortious conversion (against Mr. Douglas, M&Y, Cityway, and Mr. Bookguity); Lien Law 3-A (against Mr. Douglas, M&Y, Cityway, and Mr. Bookguity); fraud (against Mr. Douglas, M&Y, Cityway, Mr. Bookguity, Ms. Hayletts, Mr. Walcott, and Walcott LLCs); intentional infliction of emotional distress (against Mr. Walcott, Mr. Douglas, and Mr. Bookguity), and unjust enrichment (against Mr. Douglas, M&Y, Cityway, and Mr. Bookguity).

Default and Dismissal

On November 6, 2024, the court (Hon. Louis Nock) issued a Preliminary Conference order ("the PC Order") setting a Compliance Conference for February 26, 2025 and in which the court "cautioned that failure to appear at court-ordered conference may result in sanctions, including the striking of the pleading of the non-appearing party (22 NYCRR 202.27)" (NYSCEF Doc. No. 203).

This Court assumed this case in late January 2025 and adjourned the Compliance Conference from February 26, 2025 to March 11, 2025, in-person; the adjournment date and time was listed in eCourts. Neither Ms. Naghavi, nor any of the defendants, appeared for the Compliance Conference on February 26, 2025, consistent with – and ostensibly in recognition of – its adjournment to March 11, 2025.

Indeed, on the morning of March 11, 2025, Ms. Naghavi filed a letter via NYSCEF seeking extensions of various discovery deadlines set in the PC Order as she had missed those deadlines due to "unforeseen personal circumstances involving death in the family and health issues" NYSCEF Doc. No. 228). However, she did not ask for an adjournment of the March 11 in-person conference, or that her letter be accepted in lieu of her appearance, and she failed to appear for the conference. Consequently, the Court dismissed the matter pursuant to 22 NYCRR § 202.27 on March 11, 2025 (NYSCEF Doc. No. 229). Later that same day, Ms. Naghavi filed a second letter via NYSCEF claiming that she did not receive notice of the appearance from the Court or from the defendants, and sought to have the default dismissal vacated (NYSCEF Doc. No. 230). The instant motion ensued.

Vacatur of Default is Denied

At the outset, Ms. Naghavi moves to vacate her default under CPLR 3404, an incorrect statute. However, her arguments sound in the standard to vacate a default under CPLR § 5015 and the Court addresses the request under that standard.

In order to vacate a default, the movant must demonstrate a reasonable excuse and potentially meritorious cause of action (*Eugene Di Lorenzo, Inc. v A.C. Dutton Lumber Co*., 67 NY2d 138, 141 [1986]; *Kassiano v Palm Mgt. Corp*., 95 AD3d 541 [1st Dept 2012]). "The determination of whether a reasonable excuse has been offered is *sui generis* and should be based on all relevant factors" (*Chevalier v 368 E. 148th Street Assocs., LLC*, 80 AD3d 411, 413-14 [1st Dept 2011]). Among those factors are "the

length of the delay chargeable to the movant, whether the opposing party has been prejudiced, whether the default was willful, and the strong public policy favoring the resolution of cases on the merits" (*id.*; *see also Mejia v. Ramos*, 113 AD3d 429, 430 [1st Dept 2014]). The determination of whether an excuse is reasonable is left to the sound discretion of the motion courts (*Navarro v A. Trenkman Estate, Inc.*, 279 AD2d 257 [1st Dept 2001]). To demonstrate a potentially meritorious cause of action, a plaintiff need only show "a substantial possibility of success in the action" (*Ronsco Const. Co., Inc. v 30 East 85th Street Co.*, 219 AD2d 281 [1st Dept 1996]).

"[A] pro se litigant acquires no greater rights than those of any other litigant and cannot use such status to deprive defendant of the same rights as other defendants" (*Stewart v ARC Development, LLC*, 138 AD3d 413 [1st Dept 2016] quoting *Brooks v Inn at Saratoga Ass'n*, 188 AD2d 921 [3d Dept 1992]).

Ms. Naghavi failed to establish a reasonable excuse for her default in appearing at the March 11, 2025 Compliance Conference. Her arguments that she did not have notice of the appearance because it was not listed on NYSCEF, and that she did not have access to email or a method to send correspondence because she was travelling internationally, are not substantiated, unpersuasive, and otherwise contradicted by her own actions. First, the March 11, 2025 conference date was listed on eCourts. Ms. Naghavi is a licensed NYS attorney who knows, or should know, that court appearances are publicly listed on eCourts and that the Court does not separately provide notice of court dates via NYSCEF. Second, although Ms. Naghavi correctly states that the PC Order scheduled the Compliance Conference for February 26, 2025, she did not appear in Court on February 26, 2025, ostensibly in recognition of the fact that the conference had been adjourned to March 11. Third, significantly, Ms. Naghavi filed a letter via NYSCEF on the morning of March 11 seeking an extension of discovery deadlines, again, expressly if not tacitly recognizing that the conference was scheduled for that day. However, she did not seek an adjournment of the in-person conference, nor ask that her appearance be excused and that the letter be accepted in lieu of her appearance. Under these circumstances, the Court concludes that Ms. Naghavi knew there was an appearance on March 11, 2025 but failed to appear.

In addition, Ms. Naghavi's allegation that she lacked "proper" access to email or the ability to "send correspondence" due to a death in her family and health issues, is flatly contradicted by the two letters she uploaded to NYSCEF on March 11, 2025, first in the morning and then in the afternoon. Moreover, in her morning letter, Ms. Naghavi represented to the Court that she had corresponded with defendants, but by the evening of that same day she represented that she had no way to correspond with defendants. This is contradictory.

Consequently, as Ms. Naghavi failed to establish a reasonable excuse for her default, the Court declines to vacate the order dismissing the complaint (*see San-Dar Assocs. v Corp. Habitat NY, LLC*, 226 AD3d 525 [1st Dept 2024]; *Gerstein v I Travel Inc.*, 169 AD2d 492, 492 [1st Dept 1991] ["The IAS court properly denied plaintiffs' motion for vacatur of default as movants failed to establish a reasonable excuse for the default."]). Indeed, Ms. Naghavi additionally defaulted, without excuse, in appearing in support of her own motion.

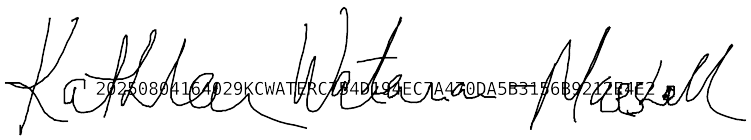
As Ms. Naghavi has not demonstrated a reasonable excuse for her failure to appear, the Court need not reach the issue of whether she has a potentially meritorious cause of action (*see Deutsche Bank Nat'l Tr. Co. v Benitez*, 179 AD3d 891, 893 [2d Dept 2020] ["Since the defendants failed to demonstrate a reasonable excuse for their default, it is unnecessary to determine whether they demonstrated the existence of a potentially meritorious defense."]). Even if, however, the Court were to reach the issue, Ms. Naghavi curt affirmation in support fails to establish that she has a meritorious cause of action, and simply concludes that defendants unfairly retained $63,000. The statement in her second March 11, 2025 letter (NYSCEF Doc. No. 230) that her default should be vacated "[b]ecause there is a meritorious claim at issue," is self-serving, conclusory and insufficient to demonstrate a meritorious claim (*id.*; *Perez v*

1790-1792 Third Avenue LLC, 211 AD3d 492 [1st Dept 2022] [conclusory allegations and hearsay statements insufficient to establish potentially meritorious claim]).[1]

Accordingly, it is hereby

ORDERED that plaintiff's motion to vacate the order dismissing this matter upon her default and restoring this case to the trial calendar is denied; and it is further

ORDERED and ADJUDGED that the County Clerk enter judgment dismissing the complaint in its entirety.



8/4/2025
DATE

KATHLEEN WATERMAN-MARSHALL, J.S.C.

CHECK ONE:	[X]	**CASE DISPOSED**		[ ]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[X] **DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**

[1] Even if Ms. Naghavi had submitted an affidavit detailing the merits of her claims, almost all of her complaint (save, potentially, the breach of contract claim against M&Y) would be subject to dismissal. The fraud claims are not pled with particularity (CPLR § 3016[b]), the facts pled in support of the intentional infliction of emotional distress claim are not extreme and outrageous (*164 Mulberry Street Corp. v Columbia University*, 4 AD3d 49 [1st Dept 2004]), the unjust enrichment claim is duplicative of the contract claim (*Coresllo v Verizon New York, Inc*., 18 NY3d 777 [2012]), and the tortious conversion claim must fail as real property cannot form a basis for conversion (*ARB Upstate Communications LLC v RJ Reuter LLC*, 93 AD3d 929, 932 [3d Dept 2012]).