Seaview Condo Units, LLC v Grant

2025 NY Slip Op 33146(U)

July 11, 2025

Civil Court of the City of New York, Kings County

Docket Number: L&T Index No. 330097/23

Judge: David A. Harris

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE
CITY OF NEW YORK
July 24, 2025
ENTERED
KINGS COUNTY

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: PART C

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SEAVIEW CONDO UNITS, LLC

L&T Index No. 330097/23
Mot. Seq. No. 2

Petitioner-Landlord,

DECISION AND ORDER

-against-

TAWANA GRANT,

Respondent-Tenant,

"JOHN DOE" and "JANE DOE,"

Respondent-Undertenants

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HONORABLE DAVID A. HARRIS, J.H.C.:

Recitation, as required by CPLR 2219(a), of the papers considered in the review of respondent's motion to vacate any default judgment, to vacate any stipulations, and for dismissal for leave to file an amended answer, and for dismissal, or alternatively for leave to file an amended answer, listed by NYSCEF Number:

19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36

After the service of a Ninety (90) Day Notice of Termination Based Upon Landlord's Intention Not To Renew Lease dated June 8, 2023 (Notice) (NYSCEF Doc. No. 3), petitioner commenced this summary proceeding seeking to recover possession of apartment 8E (Apartment) in the building located at 1437 East 108th Street in Brooklyn (Building) (NYSCEF Doc. No. 1). Respondent did not answer the petition, and the court conducted an inquest resulting in an order (NYSCEF Doc. No. 6) granting petitioner a final judgment of possession (NYSCEF Doc. No. 11).

The proceeding appeared on the calendar again on July 18, 2025, and it a new judgment was entered with a stay of execution through July 31, 2025 (NYSCEF Doc. No. 15). The judgment recites

that it is based upon a stipulation, but for reasons unclear to the court, the file includes no stipulation. Respondent then appeared by counsel (Doc. No. 18) and the instant motion ensued. The parties stipulated, in setting a submission schedule, to stay issuance and execution of a warrant of eviction pending the outcome of the instant motion (NYSCEF Doc. No. 23).

Among the reliefs sought by respondent is vacatur of any default pursuant to CPLR 5015. As construed, that provision requires "[a] defendant seeking to vacate a default under this provision must demonstrate a reasonable excuse for its delay in appearing and answering the complaint and a meritorious defense to the action (*see, e.g., Gray v. B.R. Trucking Co.*, 59 N.Y.2d 649, 650, 463 N.Y.S.2d 192, 449 N.E.2d 1270; *Blake v. City of New York*, 90 A.D.2d 531, 455 N.Y.S.2d 34)." (*Eugene Di Lorenzo, Inc. v A.C. Dutton Lbr. Co., Inc.*, 67 NY2d 138, 141 [1986]).

Here respondent asserts that respondent never received a copy of the notice of petition and petition and was unaware of the proceeding until being informed of its existence on the date of inquest.

Petitioner argues that the proferred excuse for default is insufficient because it is insufficient to warrant a traverse hearing. This argument, however, is premised on a conflation of requirements under CPLR 5015. The requirement of a reasonable excuse for default is not synonymous with assertion of an excuse sufficient to constitute a defense to the proceeding; there is no requirement that the excuse for default also constitute a defense. The court finds sufficient as excuse for default the lack of receipt of the pleadings and the lack of awareness of the proceeding constitute sufficient excuse for the default in appearance.

Among the defenses that respondent asserts both as a potentially meritorious defense and as a basis for dismissal is the assertion that the notice of petition (NYSCEF Doc. No. 2) is not in substance or form what is mandated pursuant to 22 NYCRR §208.42. Specifically, respondent asserts that the form employed by petitioner is outdated, includes incorrect links to resources purportedly available to

respondent, as a basis for dismissal, and asserts that the respondent has shown adequate basis for the default to be excused. Respondent asserts that the first notice of the proceeding came on the day the inquest occurred, and that respondent promptly sought relief.

Petitioner asserts that the notice provided in 22 NYCRR §208.42 is "just an example and the petitioner is not required to follow its language or format" (NYSCEF Doc. No. 25), citing *Chalfonte Realty Corp. v Streator, Inc.* (142 Misc 2d 501, 502-03 [Civ Ct N.Y. County 1989]). Petitioner's reliance on that precedent is misplaced. The Chief Administrative judge, by administrative order dated August 7, 2019, ordered that the form now presented in 22 NYCRR §208.42 be used. While its use was optional through September 30, 2019, its use thereafter became mandatory.

There is no question that the form employed by petitioner is not the form set forth in 22 NYCRR §208.42, as it distinctly varies in substance, and includes numerous malformed and incorrect web links. What petitioner characterizes as typographical errors function to deprive respondent of mandated information as to resources that may be available in order to prepare and assert, to the extent they exist, meaningful defenses to the proceeding. Compounding the issues that arise from use of the form of notice of petition employed by petitioner is the fact that every internet link provided appears to contain typographical errors that render the link useless, with the exception of an email address for petitioner's counsel.

The notice employed by petitioner deprives the respondent information that it is mandated to provide, and does not meet the requirements of the administrative order that makes use of the prescribed form mandatory. The defects are not merely minor variations from the prescribed language; petitioner employs an entirely different form. Petitioner does not cross-move for amendment of the notice of petition, and the form used is not in form or substance what is required.

Petitioner failed to use the required form, and even in using the form that it did, provided links replete with typographical errors that made them useless. The form employed is not only what is

required, but apparently a inaccurate iteration of a prior form of notice of petition. The proposed defense is sufficient to support vacatur of the judgment pursuant to CPLR 5015, and the judgment is vacated. Upon vacatur, because of the patent insufficiency of the notice of petition, this proceeding is dismissed without prejudice to a proceeding commenced based upon a sufficient notice.

This is the decision and order of the court.

Dated: Brooklyn, New York
July 11, 2025

David A. Harris, J.H.C.

Petitioner's attorney:

Horing, Welikson, Rosen,
Digrugilliers PC
Attn: Linda Skoller-Burton, Esq.
Attn: Zachary P. Young, Esq.
11 Hillside Avenue
Williston Park, N.Y. 11596
lburton@hwrpc.com
zyoung@hwrpc.com

Respondent's attorneys:

Brooklyn Legal Services
Attn: Emily R Farrell, Esq.
Attn: Andrew Richard Sexton, Esq.
105 Court Street, 4th floor
Brooklyn, N.Y. 11201
efarrell@lsnyc.org
asexton@lsnyc.org