

Diaz v RG3 Realty Corp

2025 NY Slip Op 34142(U)

October 28, 2025

Supreme Court, New York County

Docket Number: Index No. 150952/2020

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

MARGARITA DIAZ

Plaintiff,

- v -

RG3 REALTY CORP,

Defendant.

-----X

INDEX NO. 150952/2020

MOTION DATE 10/23/2025

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 31, 32, 33, 34, 35, 36, 37, 38, 39

were read on this motion to/for RESTORE.

Upon the foregoing papers, plaintiff’s motion to restore is denied for the reasons set forth below.

Background

Plaintiff brought this negligence and nuisance case against the owner of her apartment building on West 165th Street in Manhattan after her ceiling collapsed, and she alleges that she was injured, on January 24, 2019. A default judgment was entered against defendant in a decision and order authored by Justice d’Auguste dated October 6, 2020 (NYSCEF Doc. No. 10).

Over three years after obtaining the default judgment, plaintiff finally filed a note of issue on January 31, 2024 and asserted that this case was ready for trial (NYSCEF Doc. No. 16). When the case appeared on the trial calendar, plaintiff again represented that the case was ready, and the TAP judge transferred the case to Part 14 for an inquest. Shortly thereafter this Court

held a pre-inquest conference with plaintiff on March 12, 2025. Despite representing that plaintiff was ready for trial – both in her note of issue and subsequently to the Trial Assignment Part – at the conference it came out that plaintiff was not actually ready. The Court therefore gave plaintiff two months to prepare for the inquest and scheduled it for May 8, 2025.

On May 7, 2025, the day before the scheduled inquest, plaintiff’s counsel uploaded a letter to NYSCEF stating that they were still not ready to proceed with the inquest and requesting an adjournment (NYSCEF Doc. No. 28). The Court responded that same day and declined to adjourn the inquest on less 24 hours’ notice; the notice in part read “I look forward to seeing you tomorrow” (NYSCEF Doc. No. 29). Plaintiff did not appear for the inquest the next day, so the Court marked the case as disposed (NYSCEF Doc. No. 30). Plaintiff now moves to restore this matter to the Court’s active calendar.

Discussion

First, NYSCEF Doc. No. 34 is labeled as a memorandum of law, but it is a duplicate of the notice of motion. There is therefore no law before the Court to consider.

Furthermore, the Court is confused by several statements made in movant’s counsel’s affirmation in support of this motion at NYSCEF Doc. No. 32. At paragraph 13, it is claimed that counsel’s office did not appear for the inquest on May 8, 2025 due to a clerical error (*id.*). This makes little sense considering counsel’s office requested an adjournment the day before, and the Court promptly declined and said, “I look forward to seeing you tomorrow.” Then, at paragraph 15, it is claimed that “...there was no default by Plaintiff” (*id.*). Again, this makes little sense;

this case was marked disposed after plaintiff's counsel did not appear for the inquest – in other words, because plaintiff defaulted. Obviously, plaintiff knew about the date, asked for an adjournment, was told “no,” and decided not to show up anyway. There seems not to be any mistake there.

The Court therefore denies plaintiff's motion to restore. Plaintiff may bring another motion upon proper papers which should include but is not limited to: 1) an affidavit of merit from plaintiff, 2) proof that plaintiff sought records well prior to the inquest and followed up prior to the inquest 3) a more detailed explanation of the alleged “clerical error” that led to plaintiff's default (an affirmation of the person who did not understand the Court's “see you tomorrow” response, for example), and 4) proof you are ready now with all relevant documents (whatever plaintiff intends to use at the inquest must be uploaded and appropriately redacted before the next motion is uploaded).


Plaintiff does seem aware of the one-year deadline in moving to restore; this Court does not consider the motion upon which this decision is based to be activity on the case for calculating the year deadline. Quite frankly, the motion was not serious and can only have been meant to delay even longer. It lacked the bare minimum – it had no memo of law and had no affidavit of merit. At this point, the Court is unsure whether plaintiff's attorneys are covering up for an uncooperative client, for their own shortcomings or something else. This is the opposite of zealous advocacy – the attorneys waited for years after the default to finally file for an inquest, misrepresented the status of their readiness until their feet were to the fire, then just failed to

show up on the appointed day when their last-minute demand for more time was declined.

Plaintiff's attorneys are playing some game – but this Court is not playing along.

Accordingly it is hereby

ORDERED that plaintiff's motion is denied in its entirety.

10/28/2025			
DATE			ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> OTHER
	<input type="checkbox"/>		<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/>		<input type="checkbox"/> FIDUCIARY APPOINTMENT
	<input type="checkbox"/>		<input type="checkbox"/> REFERENCE