

Ash II LLC v Gramercy Park House LLC

2025 NY Slip Op 34307(U)

November 10, 2025

Supreme Court, New York County

Docket Number: Index No. 652935/2025

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

-----X

ASH II LLC

Plaintiff,

- v -

GRAMERCY PARK HOUSE LLC,

Defendant.

-----X

INDEX NO. 652935/2025

MOTION DATE 07/21/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28

were read on this motion to/for JUDGMENT - DEFAULT.

Upon the foregoing documents, the motion is granted, and the cross-motion is denied.

Background

Plaintiff is the owner of a property in a New York City Historic District that neighbors Defendant’s building. According to the NYC Department of Housing Preservation and Development records, going back to at least 1902 there has been a staircase anchored in Plaintiff’s courtyard that leads to Defendant’s property. This staircase has functioned as the secondary means of egress in case of fire that is required by law. In 2021, Defendant was seeking to demolish their building and construct a new one. Connected with that project, they entered into a license agreement (“LA”) with Plaintiff in order to set forth the terms and conditions of Defendant’s access onto Plaintiff’s property.

During the course of construction, Defendant had removed the staircase and installed a temporary second means of egress. Plaintiff discovered that this temporary means had been removed when they received a violation and vacate order from the Department of Buildings in January of 2025. Plaintiff then requested that Defendant cure the violation and pay the fines,

which Defendant refused to do. A further point of contention between the parties was a scaffolding that Defendant installed on Plaintiff's premises without permission and that Defendant has not removed. Plaintiff filed this underlying proceeding in May of 2025 after discussions proved fruitless, with causes of action sounding in breach of contract, trespass, and seeking declaratory relief related to the secondary means of egress.

Defendant was served the summons and complaint via the Secretary of State. A secondary notice to corporation was mailed to Defendant at an address on Broadway. Defendant did not answer or appear, and Plaintiff moved for default judgment. In conjunction with this, Defendant was served notice of the motion via the secretary of state and at the Broadway address. This motion was originally granted in a judgment that was then vacated by an agreement between the parties that Defendant would have an extension of time to put forth responsive papers. Defendant has now cross-moved to vacate the default and extend the time with which to answer.

Discussion

In order to successfully oppose a default judgment motion, the nonmovant must "demonstrate a reasonable excuse for the default and a meritorious defense." *Morrison Cohen LLP v. Fink*, 81 A.D.3d 467, 468 [1st Dept. 2011]. Because (for the reasons given below) Defendant has not established either prong, the cross-motion must be denied and the default motion granted.

Defendant Fails to Establish a Reasonable Excuse

A reasonable excuse is required for opposing a default motion, although the Supreme Court "has broad discretion in gauging the sufficiency of an excuse proffered by a defendant who failed to serve timely an answer." *Cirillo v. Macy's*, 61 A.D.3d 538, 540 [1st Dept. 2009].

Here, Defendant has submitted an affidavit from an authorized representative explaining that the company had moved offices from the Broadway address to a new location in Pound Ridge. As a result, the secondary notices sent to the previous address were never received by Defendant. But Defendant has failed to address the primary service that was made on the Secretary of State, either in their papers or in oral argument held on this matter on November 10, 2025. Service for a corporate defendant is deemed completed when the Secretary of State is served. *Fisher v. Lewis Constr. NYC Inc.*, 179 A.D.3d 407, 408 [1st Dept. 2020]. While Defendant has never offered an excuse for why service on the Secretary of State allegedly did not reach them, the Court notes that a failure to maintain a current address for a corporation with the Secretary means that “courts will not find a reasonable excuse for a default.” *Majada Inc. v. E&A RE Capital Corp.*, 205 A.D.3d 648, 649 [1st Dept. 2022].

Defendant Fails to Establish a Meritorious Defense

When a party fails to establish a reasonable excuse for a default, the court need not consider the matter of a meritorious defense. *Wells Fargo Bank, N.A. v. Cisse*, 156 A.D.3d 545, 545 [1st Dept. 2017]. But in the interests of thoroughness, the Court will address the meritorious defense prong. Defendant argues variously that there is no evidence of an easement; that even if there was an egress easement it was effectively waived because there was no mention of it in the LA and the staircase was not included in the plans for the new building on Defendant’s property; and that the LA never explicitly required Defendant to install a secondary means of egress. These arguments are unavailing. Plaintiff has pointed to the relevant, uncontested HPD records indicating the presence of the staircase as a secondary egress dating back to at least 1902. Section 9(B) of the LA specifically states that Defendant’s access to Plaintiff’s property was not to “unreasonably interfere with the use” of the premises and that the premises was to be restored


to its former condition. That former condition clearly included a secondary means of egress, without which the building cannot be used. Defendant has not made a showing of waiver in these circumstances, or that there was no easement in place before their access to Plaintiff’s property. Furthermore, Defendant does not address the issue of the alleged continuing trespass in the form of scaffolding. Accordingly, it is hereby

ADJUDGED the motion is granted and the cross-motion is denied; and it is further ORDERED and DECLARED that Plaintiff has a valid easement for use of the Egress Easement as a secondary means of egress; and it is further

ORDERED that Plaintiff is entitled to default judgment as to liability; and it is further ORDERED that an inquest on damages be held; and it is further

ORDERED that a copy of this order with notice of entry be served by the movant upon the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who is directed, upon the filing of a note of issue and a certificate of readiness and the payment of proper fees, if any, to place this action on the appropriate trial calendar for the assessment hereinabove directed; and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).


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LYLE E. FRANK, J.S.C.

11/10/2025
DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: