

Luciani v Martinez
2025 NY Slip Op 35427(U)
February 10, 2025
Supreme Court, Nassau County
Docket Number: Index No. 601636/2024
Judge: Ellen Tobin
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SUPREME COURT: STATE OF NEW YORK
COUNTY OF NASSAU

PRESENT: Hon. Ellen Tobin, A.J.S.C.

X

WILLIAM LUCIANI,

Plaintiff,

- against -

RAUL PAUL MARTINEZ a/k/a PAUL MARTINEZ
and SURPLUS DEPOSITS, INC.,

Defendants.

X

TRIAL/JAS PART 33

Index No. 601636/2024

Motion Seq. Nos. 001, 002

DECISION AND ORDER

The following papers were read on these motions:

NYSCEF Doc. Nos.

Notice of Motion, Affidavit and Affirmation in Support and Exhibits	5 - 18
Notice of Cross Motion, Affidavits and Affirmation in Support of Cross Motion and Opposition to Motion and Exhibits	24 - 40
Reply Affirmations in Further Support of Motion and Opposition to Cross Motion and Exhibits	47 - 50
Reply Affirmation in Further Support of Cross Motion	51

Upon the foregoing papers, plaintiff William Luciani ("Plaintiff") moves pursuant to CPLR § 3215 [a] for entry of default judgments against defendants Raul Paul Martinez a/k/a Paul Martinez ("Martinez") and Surplus Deposits, Inc. ("SDI" and, together with Martinez, "Defendants"), and for such other and further relief as the Court deems just and proper (Motion Seq. No. 001). Also upon the foregoing papers, Defendants cross move pursuant to CPLR § 3211 [a] [8] for dismissal of the Summons with Notice as against Martinez for lack of personal jurisdiction, and, in effect, pursuant to CPLR § 3012 [d] to extend SDI's time to respond to the Complaint or compel Plaintiff to accept SDI's late answer, and for such other and further relief as the Court deems just and proper (Motion Seq. No. 002). Each side opposes the other side's motion

and filed reply papers in further support of his/their motions. The motions are decided as set forth herein.

Plaintiff commenced this action in June 2024 by filing a Summons with Notice (NYSCEF Doc. No. 1). The Notice states, in pertinent part:

[T]he relief sought by plaintiff is to recover damages in the amount of \$500,000.00, plus interest, and attorneys' fees and costs, for: violations of the Home Equity Theft Protection Act and Real Property Law §442, breach of fiduciary duty, fraud, fraudulent misrepresentation, negligence, negligent misrepresentation, unjust enrichment, and violation of NY Judiciary Law §479, in connection with the transfer of plaintiff's residence commonly known as 28 Eagle Lane, Farmingdale, New York 11735.

In support of the motion, Plaintiff's counsel avers: "This is an action to recover damages from Martinez for fraud, fraudulent misrepresentation, and against Martinez and [SDI] for violations of Real Property Law §442 stemming from Defendants' illicit roles in the ownership transfer of Plaintiff's home commonly known as 28 Eagle Lane, Farmingdale, New York 11735 (the "Residence") (Kamran Aff. in Supp. of Motion [Jun. 6, 2024] ¶ 3).

A. Defendants' Cross Motion To Dismiss For Lack of Personal Jurisdiction

The Affirmation of Service filed by Plaintiff states that the Summons and other documents were served on Martinez on February 28, 2024 by delivery of the papers to Blanca Souvnatski, "a person of suitable age and discretion," at 59 Fairway Drive, Hempstead, NY, which the Process Server identified as Martinez's "dwelling house (usual place of abode)" (the "AOS") (NYSCEF Doc. No. 10). The papers were also sent to the Hempstead address by first class mail on February 29, 2024 (*id.*).¹ The AOS constitutes *prima facie* evidence of service of the Summons on Martinez (*see Harrison v Schotenstein*, 228 AD3d 848, 850 [2d Dept 2024]).

¹ Another Affidavit of Service filed by Plaintiff documents service of the Summons and other documents on SDI via delivery to the Secretary of State on February 15, 2024 (NYSCEF Doc. No. 9).

However, in an affidavit sworn to on July 2, 2024, Martinez attests he was not served with the Summons in February 2024. Martinez attests he does not live at the Hempstead address, he has lived in Massapequa since February 2024 and attaches utility bills sent to him at the Massapequa address (Martinez Aff. in Opp'n and Supp. [Jul. 2, 2024] ¶ 11 and Ex. "A"). Martinez further attests that Bianca Souvatski is a tenant who lives at the Hempstead address, she was not authorized to receive process on Martinez's behalf and in any event, she did not tell him about the lawsuit or give him a copy of the Summons (Martinez Aff. ¶ 12). Martinez's sworn denial of service combined with the supporting documentation is sufficient to contradict the AOS and warrant a hearing on the issue of personal jurisdiction as to Martinez (*see Harrison v. Schotenstein*, 228 AD3d at 850-51). Accordingly, the branch of Defendants' cross motion to dismiss pursuant to CPLR § 3211 [a] [8] is GRANTED, in part, to the extent the matter is REFERRED TO A HEARING to determine the validity of service of the Summons on Martinez.

B. Defendants' Cross Motion To Allow SDI's Late Answer

"A motion pursuant to CPLR 3012(d) to extend the time to answer a complaint requires the movant to demonstrate 'both a reasonable excuse for the delay and a potentially meritorious defense to the claims to which it is responding'" (*209 Barbey St. Trust v Scotland*, 231 AD3d 778, 779 [2d Dept 2024], quoting *Bank of New York Mellon v Norton*, 219 AD3d 680, 682-683 [2d Dept 2023]). The determination of what constitutes a reasonable excuse lies within the Court's sound discretion (*see Citimortgage, Inc. v Kowalski*, 130 AD3d 558, 558 [2d Dept 2015]) (citation omitted).

The record before the Court shows that SDI's delay in answering the Complaint was relatively brief and SDI has a potentially meritorious defense. There is no indication of willfulness on SDI's part and no showing of prejudice that will inure to Plaintiff as a result of allowing the

late Answer. In light of these factors and the strong public policy favoring the resolution of cases on their merits, the branch of Defendants' cross motion pursuant to CPLR § 3012 [d] for leave for SDI to serve and file a late answer is **GRANTED** (*see 209 Barbey St. Trust v. Scotland*, 231 AD3d at 779-80).

C. Plaintiff's Motion For Default Judgments

In light of the foregoing, Plaintiff's motion for default judgment as to Martinez is **DENIED**, without prejudice and with leave to renew after the traverse hearing if warranted. Plaintiff's motion for default judgment as to SDI is **DENIED** as moot.

Based on the foregoing it is hereby:

ORDERED, that the branch of Defendant's cross motion (Motion Seq. No. 002) for dismissal pursuant to CPLR § 3211 [8] is **GRANTED, in part**, to the extent the matter is scheduled for a traverse hearing as to Martinez on March 18, 2025, at 10:00 AM in Part 35, 100 Supreme Court Drive, Mineola, New York; and it is further

ORDERED, that the branch of Defendant's cross motion (Motion Seq. No. 002) to extend SDI's time to answer pursuant to CPLR § 3012 [d] is **GRANTED** and SDI shall serve and file its Answer within twenty (20) days of the date service of this Decision and Order with Notice of Entry; and it is further

ORDERED, that the branch of Plaintiff's motion (Motion Seq. No. 001) for default judgment as to Martinez is **DENIED, without prejudice and with leave to renew** after the traverse hearing if warranted; and it is further

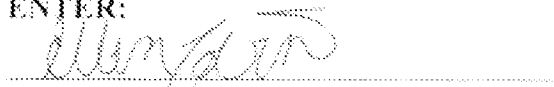
ORDERED, that the branch of Plaintiff's motion (Motion Seq. No. 001) for default judgment as to SDI is **DENIED** as moot; and it is further

ORDERED, that all other relief sought herein and not addressed or ruled on is **DENIED**.

This constitutes the Decision and Order of the Court.

DATED: Mineola, New York
February 10, 2025

ENTER:



HON. ELLEN TOBIN, A.J.S.C.

ENTERED

Feb 19 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE