

Malecaj v West 70th Owners Corp.

2026 NY Slip Op 30276(U)

January 23, 2026

Supreme Court, New York County

Docket Number: Index No. 155111/2024

Judge: Paul A. Goetz

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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. PAUL A. GOETZ PART 47

Justice

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BESNIK MALECAJ,

Plaintiff,

- v -

WEST 70TH OWNERS CORP., SEPI REALTY LLC

Defendants.

-----X

INDEX NO. 155111/2024

MOTION DATE 09/15/2025

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 60, 61, 62, 63, 64

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

In this action involving the sale of real property, defendants move pursuant to CPLR §§ 5015 and 317 to vacate a judgment entered against them; and pursuant to CPLR § 3012(d) for an extension of time to answer the complaint.

BACKGROUND

Plaintiff sued defendant West 70th Owners Corp. (Owners Corp), among other entities, in Bronx County Supreme Court, Index No 307346/2012E (the Bronx action), in connection with an injury he suffered while performing renovation work at a building located at 45 West 70th Street, New York, NY (the property), owned by Owners Corp (NYSCEF Doc No 1 ¶¶ 5-6). Plaintiff alleges that “[o]n the eve of trial in the Bronx Action, and unbeknownst to Malecaj,” Owners Corp transferred the property to defendant Sepi Realty LLC (Sepi) “for unfair, little or no consideration” (*id.*, ¶ 7). “Upon information and belief, at the time of the April 19, 2022 transfer, Owners Corp was a single asset entity, with the single asset being the 45 West 70th property” (*id.*, ¶ 8).

“While jury deliberations were underway in the Bronx Action, Owners Corp and Malecaj entered into a \$1,500,000.00 - \$1,000,000.00 high low settlement on the record” (*id.*, ¶ 9). The jury returned a verdict in plaintiff’s favor, awarding him a total of \$4,741,015, apportioning to Owners Corp 10% of the fault (*id.*, ¶ 10). However, the Bronx County Supreme Court ordered that the issue of apportionment be retried (*id.*, ¶ 11). By decision and order dated November 18, 2024, the court found Owners Corp 50% liable; and based on the high-low agreement, ordered Owners Corp to pay plaintiff \$1,500,000 (NYSCEF Doc No 26).

Plaintiff initiated this action to avoid the transfer of the property from Owners Corp to Sepi pursuant to New York Debtor and Creditor Law (DCL) §§ 273 and 274.

By decision and order of this court dated December 23, 2024, plaintiff was granted a preliminary injunction; and defendants were “enjoined from further disposing of or otherwise transferring the property [] during the pendency of this action”; and directed that “upon the sale of [the property,] defendants shall place in escrow for the benefit of plaintiff an amount sufficient to meet the maximum obligation incurred by [] Owners Corp pursuant to the verdict rendered against in” the Bronx action (MS #1, NYSCEF Doc No 31). By decision and order dated April 2, 2025, the court granted plaintiff’s motion for a default judgment as against Owners Corp, and the conveyance of the property was “avoided by plaintiff to the extent that plaintiff may execute against the property pursuant to CPLR § 5236 in order to satisfy the judgment rendered” in the Bronx action (MS #2, NYSCEF Doc No 33).

Counsel for defendants filed a notice of appearance on May 17, 2025 (NYSCEF Doc No 35). On September 15, 2025, the court signed defendants’ emergency order to show cause to “vacat[e] the default judgment and declaratory judgment against defendants dated April 2, 2025” and for “an extension of their time to file an answer,” with a TRO “stay[ing] [plaintiff] from

executing on the money judgment granted in favor of Plaintiff against” Owners Corp (NYSCEF Doc No 56).

DISCUSSION

“A defendant seeking to vacate a default in answering a complaint pursuant to CPLR 5015(a)(1) must show both a reasonable excuse for the default and the existence of a potentially meritorious defense” (*Marquez v GSB Supply, Inc.*, 240 AD3d 877, 878 [2nd Dept 2025]). CPLR § 317 provides: “A person served with a summons other than by personal delivery to him or to his agent for service . . . who does not appear may be allowed to defend the action within one year after he obtains knowledge of entry of the judgment.”

As for their reasonable excuse for default, defendants assert that they “were wholly unaware of the underlying action¹” (NYSCEF Doc No 40, p. 7). Plaintiff first served the summons and complaint on both defendants via the Secretary of State on June 11, 2024 (NYSCEF Doc Nos 15-16). Plaintiff’s order to show cause on MS #1 was signed by the court on the same day (NYSCEF Doc No 14). On June 13, 2024, plaintiff again served the summons and complaint on both defendants via the Secretary of State, along with the signed order to show cause (NYSCEF Doc Nos 17-18). On the same day, plaintiff also mailed these documents to Sepi at the address for the property, and to Owners Corp 501 Fifth Avenue, 15th Fl, New York, NY 10017, c/o S&E Azriliant PC (NYSCEF Doc No 19).

Defendants assert that they never received the summons and complaint because “the forwarded mailing was to the Subject Property, which the principals of Defendants did not reside in since 2020”; and “Defendants mistakenly never updated the mailing address with the

¹ Defendants are apparently referring to this matter and not the Bronx personal injury case.

Secretary of State” (NYSCEF Doc No 40, p. 7).² Defendants also note that “Plaintiff was aware of Defendant’s last known address, email address and phone number” and that they “were not occupying [or] working out of the Subject Property” (*id.*).

Defendants admit that they “became aware of this matter when they received an Order to Show Cause with a temporary restraining order preventing the sale, transfer, or encumbrance of the property” (NYSCEF Doc No 37, p. 5), i.e., the order to show cause on MS #1 (NYSCEF Doc No 14). They assert that upon receipt, they “believed that the Order to Show Cause was the entirety of the proceeding against defendants and was temporary” (*id.*).

Defendants’ excuses for default fail for several reasons: (1) defendants do not state *how* they received the OSC, and it appears the OSC was only served in conjunction with the summons and complaint (NYSCEF Doc Nos 17-19); (2) defendants do not explain why they believed the OSC to be “the entirety of the proceeding,” or why they did not oppose the motion; (3) while they assert that “Plaintiff was aware of Defendant’s last known address, email address and phone number,” they do not identify their current addresses, nor do they rebut the representation in the affirmation of service that they also received the papers by email (NYSCEF Doc No 19; NYSCEF Doc No 61 [Russell Abrams using the same email address noted in the affirmation of service]); and (4) whether “the individual shareholders/members” resided at the property when process was served is irrelevant, as plaintiff was serving Owners Corp and Sepi, not individuals.

Moreover, “a corporate defendant’s failure to update its address for service that is kept on file with the Secretary of State generally does not constitute a reasonable excuse” (*Li Fen Li v*

² Though not mentioned in defendants’ memorandum of law in support of the motion, in two supporting affirmations, defendants assert that “[t]he address on file with the secretary of state was Defendants’ former accountant, who did not advise defendants of the service” (NYSCEF Doc No 37, p. 6).

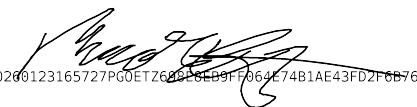
Cannon Co., Inc., 155 AD3d 858, 859 [2nd Dept 2017]). While “a court is not precluded from finding a reasonable excuse in such a case where the circumstances warrant it,” here, defendants provide no “evidence that it attempted to update its address on file with the Secretary of State” (*id.*; NYSCEF Doc No 62-63 [Department of State entity information reflecting that defendants have not changed their registered addresses]).

Thus, defendants have not established a reasonable excuse for their default entitling to an order vacating the default judgment against them (CPLR § 5015) or for an extension of time to answer the complaint (CPLR § 3012 [also requiring “a showing of reasonable excuse for delay or default”]).

CONCLUSION

Based on the foregoing, it is

ORDERED that defendants’ motion is denied.


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<u>1/23/2026</u> DATE			<u>PAUL A. GOETZ, J.S.C.</u>
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE