

Barua v Barua

2013 NY Slip Op 32880(U)

October 3, 2013

Sup Ct, Queens County

Docket Number: 19576/11

Judge: Bernice D. Siegal

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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK STATE SUPREME COURT – QUEENS COUNTY
Present: HONORABLE BERNICE D. SIEGAL IAS TERM, PART 19
Justice

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Rakhal Barua, Nayan Barua, Milon Barua, Amal Barua
Badan Barua, Shimpu Barua, Uttam Barua, Shikrity Barua,
Prabir Barua, Bidhan Barua, Sadhan Barua, Suparna Barua
Priyashanta Barua, Ussash Barua, Sureet Barua, Ashim Barua,
Kanak Barua, Prashanta Barua, Amal Barua, Pronoy Barua,
Shipon Barua, Rana Barua, Liton Barua, Lovely Barua,
Amit Barua, Uzzal Barua, Subashish Barua, Nishan Barua,
Probir Barua, Sourab Barua, Nantu Barua, Binoy, Chakma,
Udayan Barua (CTG), Udayan Barua (Ramu), Regal Barua,
Vhabashi Mong, Rupam Barua, Debesh Barua, Shilpi Barua,
Lipika Barua, Subra Barua, Shyamali Barua, Rupali Barua,
Nilima Barua, Shikha Barua, Papri Barua, Utpal Barua,
Sulek Barua, Dipty K. Barua, Moushoumi Barua, and Jarne
Barua,

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Motion Seq. No.: 04

individually as well as in the right of the
Bangladesh Buddhist Vihara of New York,
a religious corporation,

Plaintiffs

-against-

Subir Barua, Sumana Barua and Titu Barua,

Defendants.

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The following papers numbered 1 to 12 read on this motion for an order (a) vacate this Court’s order granting summary judgment on default and (b) to dismiss the complaint based upon plaintiff’s lack of standing to sue.

	PAPERS NUMBERED
Notice of Motion - Affidavits-Exhibits.....	1 - 4
Affirmation in Opposition.....	5- 9
Reply Affirmation.....	10 - 12

Upon the foregoing papers, it is hereby ordered that the motion is resolved as follows:

Defendant Subir Barua (“Subir”) moves for an order vacating this court’s order granting summary judgment on default and for an order dismissing the complaint based upon plaintiff’s lack of standing to bring this action.

Facts

The Bangladesh Buddhist Vihara of New York (hereinafter “Association”) operated its temple at the premises known as 87-38 112th St. Richmond Hill, New York (“Premises”). The association raised funds to purchase the Premises.

On October 9, 2009, the Defendants allegedly consummated the purchase of the Premises and took title in Defendants’ own name. The parties allegedly entered into an Agreement for the Defendants to act as nominees on behalf of the Association in the purchase of the Premises (“Agreement”). Defendants have refused to reconvey the premises to the Association.

Plaintiffs contend that the Defendants have improperly subdivided the Premises and are improperly collecting rents.

Plaintiffs moved for Summary Judgment with a return date of September 10, 2012. Defendants, in advance of the return date, faxed affidavits of actual engagement. On the return date, Defendants sent ManYam (“Yam”) to cover the appearance to insure that the matter was adjourned. The matter appeared before Justice Martin Ritholtz. The motion was ultimately marked fully submitted, no opposition. As such, this court granted Plaintiffs’ motion for Summary Judgment accordingly.

Yam states in her affidavit that she appeared before Justice Ritholtz on September 10, 2012 and was told by the clerk that the motion for Summary Judgment would be adjourned to September

17, 2012 and that she should notify all the parties.

Subir contends, in his affidavit, that he has no affiliation with the Association and that he purchased the Premises for the purpose of creating a temple for the Bangladesh Buddhist Center of America (“BBC”). Subir also contends that while he was in Coma and in a hospital between November 7, 2009 and January 8, 2010, the Plaintiffs forged his signature on the alleged Agreement.

The court notes that the parties each submitted a copy of the “Agreement” that are not identical in that a page indicating that the Agreement was signed by Subir on October 9, 2009, submitted by Plaintiffs, is missing from Subir’s submission. In addition, both versions of the Agreement contain two separate dates of October 9, 2009 and November 16, 2009.

Discussion

“A motion to vacate a default is addressed to the sound discretion of the motion court.” (*Braynin v. Dunleavy*, 109 A.D.3d 571, 571 [2nd Dept 2013]; *Kohn v. Kohn*, 86 A.D.3d 630 [2nd Dept 2011].) “In determining whether to vacate an order that granted a motion on default, the court must determine whether the party seeking vacatur has demonstrated a reasonable excuse for its default and a potentially meritorious opposition to the motion.” (Id. at 571; see CPLR 5015(a)(1).)

Based upon the affirmation of actual engagement and the affidavit from Yam, Defendant has clearly established a reasonable excuse for the default. In addition, Subir’s evidentiary submissions established a potentially meritorious defense to the motion, and additionally raised triable issues of fact in opposition to the plaintiffs’ underlying motion for summary judgment. (*Needleman v. Tornheim*, 106 A.D.3d 707 [2nd Dept 2013].)

Motion to Dismiss

Subir moves for a motion to dismiss because the Plaintiffs are all “suing in the right of the

entity (“Association”), a religious corporation that Subir contends does not exist in New York.¹ Accordingly, Subir contends that the Plaintiffs do not have standing to sue. However, the Association was incorporated pursuant to Article 10 of the Religious Corporation Law with the Queens County Clerk’s Office under index #INC 1965/2009. Furthermore, the Plaintiffs’ brought this action individually “as well as in the right of the” Association.

Conclusion

For the reasons set forth above, Subir’s motion to vacate the default solely as to Subir Barua is granted and Plaintiffs’ underlying motion for Summary Judgment as against Subir Barua is denied.

The portion of Subir’s motion to dismiss is denied.

Dated: October 3 , 2013

Bernice D. Siegal, J. S. C.

¹Subir attaches a printout from the New York State Secretary of State website which does not list the Association.