

Karamuco v Gavriel Plaza, Inc
2018 NY Slip Op 33735(U)
April 6, 2018
Supreme Court, Queens County
Docket Number: Index No. 704278/2017
Judge: Leslie J. Purificacion
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NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE LESLIE J. PURIFICACION IA Part 39
Justice

-----X
ASTRIT KARAMUCO and DIANA KARAMUCO,

Plaintiff,

-against-

GAVRIEL PLAZA, INC,

Defendants.
-----X

Index
Number 704278/2017

Motion Seq. #2

The following papers numbered 1 to 12 read on this motion by plaintiffs for an order pursuant to CPLR § 3215 granting plaintiffs a default judgment against defendant and defendant's cross motion to dismiss the complaint.

	<u>PAPERS NUMBERED</u>
N.M., Aff., Exhibits and Service.....	1-4
N.C.M., Aff., Exhibits and Serice.....	5-8
Opp. Aff and Service.....	9-10
Reply.....	11-12

Upon the foregoing papers it is ordered that the motions are decided as follows:

Plaintiffs commenced this action for breach of contract and unjust enrichment by the filing of a summons and complaint on September 28, 2011. Defendant was served on December 22, 2011. To date, the defendant has not filed an answer or move for an extension of time to do so. Plaintiffs now move for a default judgment against the defendant and defendant cross moves for an order dismissing the complaint.

In January of 2007, the plaintiffs allege they entered into an oral contract with Tzur Cohen, Highland Building Group, 2.S.K Contracting, Inc., Five Boro Construction and Five Boro Construction of Great Neck for the construction and renovation of a premise located at 7240 Main Street in Queens County also known as the Gavriel Building. Plaintiffs allege that they worked at the premise from January 2007 to July 2007. The parties agreed that the plaintiffs would be paid the fair market value for the renovation work, including material and labor costs. Plaintiffs claim that they have received cash pay outs from Jenal Celaj, Tzur Cohen and Highland Building Group for the construction work performed in the amount of \$58,000.00, the last of which was in September of 2008. Plaintiffs assert that they were never full compensated for the work they did on the building and are seeking the remainder of the money owed to them.

Plaintiffs initially brought a lawsuit against Tzur Cohen, Highland Building Group and Jenal Celaj under index number 2291/10 on January 25, 2010 in Queens County. On August 10, 2010, the court granted summary judgment to Jenal Celaj and the complaint was dismissed against him. Plaintiffs then moved for a default judgment against the remaining defendants and the application was denied for failure to provide sufficient proof of the claim. Plaintiffs next commenced an action against Jenal Celaj's employer 2.S.K Contracting, Inc. on April 12, 2011 under index number 8447/2011 in Kings County. 2.S.K Contracting failed to answer the complaint and by decision and order (Demarest,J), dated March 28, 2012, the plaintiffs were granted a default judgment. After an inquest, plaintiffs were granted a judgment in the amount of \$396,000.00. Plaintiffs allege that they have not been able to collect the judgment because 2.S.K Contracting, Inc. is no longer in business. Plaintiff commenced the

instant action against defendant under index number 22498/11 in Queens County and service was effectuated on December 22, 2011. Plaintiffs contend that they made an agreement with defendant's counsel, wherein plaintiffs agreed to an extension of time for the filing of an answer for the defendant if defendant would produce a corporate representative from Gavriel to be deposed on April 19, 2013. Thereafter, plaintiffs commenced another action against Tzur Cohen, Highland Builders Group LLC, Five Boro Construction, LLC, Five Boro Construction of Great Neck LLC and Gavriel Plaza, Inc. under index number 505156/13 in Kings County on August 30, 2013. By decision and order (Knipel, J.), dated September 5, 2014, default judgments were granted against all the defendants except Gavriel, who had appeared in the action. Thereafter, Gavriel Plaza, Inc. moved for summary judgment dismissing the complaint and by decision and order dated, May 15, 2015, Justice Knipel dismissed plaintiff's claims against Gavriel. On or about October 1, 2016, Justice Knipel held an inquest against the aforementioned defaulting defendants and awarded plaintiffs another judgment in the amount of \$396,000.00.

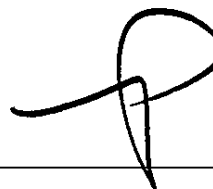
Pursuant to CPLR §3215, a plaintiff may seek a default judgment against a party which fails to answer the complaint within the time specified by statute. However, if the plaintiff fails to take proceeding for the entry of the judgment within one year after the default, the court shall not enter judgment but shall dismiss the case, unless sufficient cause is shown for the delay and a meritorious claim.

Here, the plaintiff has provided an affidavit of merit alleging a viable cause of action for breach of contract and unjust enrichment against defendant. However, plaintiff's counsel fails to proffer a reasonable excuse for its delay in timely making the

instant application. After reviewing the extensive procedural history of the case and companion cases, it remains unclear why plaintiffs waited almost two years after Justice Knipel dismissed their identical claim in Kings County to seek a default judgment against the defendant in this action. While plaintiffs may contend they were in settlement negotiations and other litigation activity with the defendant, those activities ceased in May of 2015 when the matter was dismissed. In addition, plaintiffs fail to explain why it commenced a second action including the defendant in Kings County after it had already commenced the instant action or why they then let the instant matter linger over five and half years.

Accordingly, the plaintiffs' motion for a default judgment is denied. The defendant's cross motion is granted to the extent that the complaint against them is dismissed.

Date: **APR 06 2018**



Hon. Leslie J. Purificacion, J.S.C.

FILED
APR 23 2018
COUNTY CLERK
QUEENS COUNTY