

717 E. Tremont Ave, L.L.C. v Akuoko

2020 NY Slip Op 30104(U)

January 9, 2020

Supreme Court, New York County

Docket Number: 650134/2019

Judge: Debra A. James

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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. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

717 EAST TREMONT AVE, L.L.C.,
Plaintiff,

INDEX NO. 650134/2019
MOTION DATE 12/17/2019
MOTION SEQ. NO. 003

- v -

FORSTER AKUOKO and BEATRICE AKUOKO
Defendants.

ORDER - INTERIM

The following e-filed documents, listed by NYSCEF document number (Motion 003) 16, 17, 18, 19, 20
were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT

ORDER

Upon the foregoing documents, it is

WHEREAS, this matter having come on before this court
on December 17, 2019, on motion of the defendants Forster K. Akuoko
and Beatrice Akuoko to vacate a default judgment against
defendants, arguing that this court lacks personal jurisdiction
over the defendants, and plaintiff having appeared by David Wood,
Esq. and the defendants pro se having appeared, and, pursuant to
CPLR 4212, the court having on its own motion determined to
consider the appointment of a referee to hear and report, and it
appearing to the court that an appointment is appropriate, it is
now hereby

ORDERED that a Judicial Hearing Officer ("JHO") or Special
Referee shall be designated to hear and report to this court on

the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

(1) issue whether the teenage son of defendants was served with process and whether such son was "a person of suitable age and discretion" pursuant to CPLR 308(2); and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR unless otherwise indicated; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that counsel and defendants pro se shall immediately consult one another, with the assistance of the principal court attorney of IAS Part 59, and counsel for plaintiff shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as

soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts; and it is further

ORDERED that, unless otherwise directed by this court in any Order that may be issued together with this Order of Reference to Hear and Report, the issues presented in any motion identified in the first paragraph hereof shall be held in abeyance pending

submission of the Report of the JHO/Special Referee and the determination of this court thereon; and it is further

ORDERED that counsel are directed to appear in IAS Part 59, Room 331, 60 Centre Street, on April 21, 2020, 9:30 PM for a preliminary conference.

DECISION

In his supporting affidavit, defendant Forster Akuoko raises an issue of fact whether his teenage son, with whom process was purportedly left, is "a person of suitable age and discretion" under CPLR 308(2), which must be resolved at an evidentiary hearing. See Chi v Miller, 63 Misc3d 354, 358-360 (Sup Ct. Queens Co. 2019).

1/9/2020
DATE

Debra A. James
DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE