

MD CBD 180 Franklin LLC v State Natl. Ins. Co.

2020 NY Slip Op 33307(U)

October 7, 2020

Supreme Court, New York County

Docket Number: 651332/2019

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART IAS MOTION 14

Justice

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MD CBD 180 FRANKLIN LLC,

Plaintiff,

- v -

STATE NATIONAL INSURANCE COMPANY, 168
FRANKLIN HOLDINGS, LLC, BRITT REALTY,
LLC, LIBERTY INSURANCE UNDERWRITERS,
INC., NAVIGATORS INSURANCE COMPANY, ISSAC &
STERN ARCHITECTS, P.C., A & F FIRE PROTECTION
CO., INC., MEC GENERAL CONSTRUCTION, NETT
PROJECT LLC, P & B HEATING & AIR CONDITIONING
CORP., TRIED N' TRUE PLUMBING & HEATING CO., TOP
SHELF ELECTRIC CORP., MAR-SAL CONTRACTING
INC., MAG BUILDERS INC.

Defendant.

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**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 011) 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 312, 313, 314, 315, 316, 317

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

The following e-filed documents, listed by NYSCEF document number (Motion 012) 309, 310, 311, 318, 319, 320, 321, 322

were read on this motion to/for RENEW.

Motion Sequence Numbers 011 and 012 are consolidated for disposition.

The motion (MS011) by defendants 168 Franklin Holdings, LLC and Britt Realty LLC (collectively "Movants") to vacate the default judgment and compel acceptance of the filed answer is granted.

The motion (MS012) by plaintiff to renew this Court's prior decision is denied as moot.

Background

This dispute arises out of alleged defects in a large residential real estate project in Brooklyn. Movants explain that their failure to file an answer was an inadvertent law office failure. Their attorney explains that she unintentionally forgot to timely file an answer after the Court previously decided a motion to dismiss the complaint. Movants argue that this case has been heavily litigated and has nearly been resolved on numerous occasions. They also point out that they filed an answer on August 7, 2020, about a week after the motion for a default judgment against them was filed.

Movants claim that they have meritorious defenses, including that defendant Britt did not perform any of the construction that allegedly resulted in defects and that there were pre-property transfer inspections (defendant 168 Franklin sold the building to plaintiff) that defeat plaintiff's claims.

In opposition, plaintiff argues that the instant motion is procedurally defective because Movants did not seek renewal or to reargue. It claims that if the Court considers the motion, Movants have not shown a reasonable excuse or a meritorious defense. Plaintiff claims that counsel for movants reliance on the ongoing pandemic as its reasonable excuse is insufficient because it has nothing to do with the failure to answer. It points out that Movants failed to timely file opposition to plaintiff's motion for a default judgment (they eventually filed late papers that the Court did not consider). Plaintiff maintains that 168 Franklin sold plaintiff a large residential building constructed under the supervision of defendant Britt (the general contractor) that experienced substantial water leaks.

In reply, Movants assert the motion is procedurally valid and that they have a reasonable excuse. Movants insist that they have meritorious defenses to the claims asserted by plaintiff and should be allowed to litigate this case.

Discussion

The Court grants the motion. This Court prefers that cases be decided on the merits, especially in cases involving numerous defendants and claims. The fact is that Movants filed an answer (NYSCEF Doc. No. 226) but plaintiff decided to reject it (NYSCEF Doc. No. 227). Certainly, plaintiff was entitled to do that; but it led to the instant motion practice. And the Court observes that counsel for Movants' inability to timely file opposition papers to the default motion or file papers under the correct motion sequence number, while evidence of sloppiness and carelessness, is not a basis to deny the clients' motion to vacate a default judgment.

Movants clearly demonstrated a reasonable excuse for not filing a timely answer: counsel for Movants claimed that she simply did not properly put the deadline to answer in her calendar. Mistakes happen and this Court will accept that excuse – this time. Movants also demonstrated a meritorious defense. Contrary to plaintiff's argument, Justice Kahn's previous decision did not reject Movants' defenses. He merely denied a motion to dismiss.

In light of the fact that the Court is vacating Movants' default, the motion (MS012) by plaintiff to renew the Court's decision granting a default judgment is denied as moot. The timing of a potential inquest (whether at trial or before) is no longer an issue.

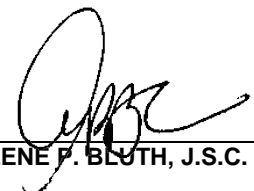
Accordingly, it is hereby

ORDERED that the motion (MS011) by defendants 168 Franklin Holdings, LLC and Britt Realty LLC to vacate the default judgment against them and related relief is granted, the default is vacated and plaintiff is directed to accept their answer (NYSCEF Doc. No. 226) and

the cross-claims contained in the answer shall be responded to pursuant to the CPLR; and it is further

ORDERED that the motion by plaintiff (MS012) to renew this Court’s default judgment decision regarding the timing of the inquest is denied as moot.

Remote Conference: October 14, 2020 at 10:30 a.m.

<u>10/7/2020</u> DATE	 ARLENE F. BLUTH, J.S.C.			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE