

City of New York v Limtung

2020 NY Slip Op 34276(U)

December 22, 2020

Supreme Court, New York County

Docket Number: 451866/2019

Judge: Arlene P. Bluth

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**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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CITY OF NEW YORK

Plaintiff,

- v -

HIN LIMITUNG,

Defendant.

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INDEX NO. 451866/2019
MOTION DATE 12/09/2020
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

were read on this motion to/for RENEW.

The motion by self-represented defendant to renew this Court’s decision granting plaintiff a default judgment is granted, and upon renewal the Court adheres to its previous decision that plaintiff is entitled to a default judgment.

Background

Plaintiff brings this case seeking to enforce a penalty imposed on defendant arising out of an Environmental Control Board violation. After a hearing before OATH, a \$60,000 penalty was issued against defendant. Plaintiff claims that no part of this amount has been paid.

Previously, the Court granted plaintiff’s motion for a default judgment (NYSCEF Doc. No. 17). It found that defendant, who opposed the motion, had not raised a reasonable excuse and did not even address whether he had a meritorious defense (*id.*).

Defendant now moves to renew and vacate the judgment. He claims that he could not access certain documents due to the ongoing pandemic but now attaches numerous exhibits. Defendant argues that he is the wrong person and did not own the property where the violation

(that resulted in the \$60,000 penalty) was issued. He asserts that “On or around []February 21, 2019, the owner of the property with an address of 31-70 Crescent Street, Astoria, NY 11106 was Newest, Inc.” (NYSCEF Doc. No. 24 at 10). In support of this assertion, defendant attaches a memorandum of sale after a foreclosure auction in May 2015 for the premises at 31-70 Crescent Street in Astoria stating the property was sold to Newest, Inc. (*id.* exh H). Apparently, defendant lost the property as a result of this foreclosure case.

In opposition, plaintiff explains that although the property was auctioned in May 2015, the deed transferring the property to the owner was not filed in the Office of the City Register until July 2019. Plaintiff maintains that when the violation was issued in February 2019, defendant was still the record owner of the property. It also raises numerous procedural objections to defendant’s claims, including that he cannot seek to overturn OATH’s decision in this litigation because he did not bring an Article 78, that the OATH decision has preclusive effect and that defendant did not raise this legal theory in opposition to the default motion.

Renewal

As an initial matter, the Court grants the motion to renew. “[A] motion for leave to renew is not subject to any particular time constraints. A motion to renew simply requires a showing of new facts not offered on the prior motion that would change the prior determination or a change in the law that would change the prior determination and a reasonable justification for the failure to present such facts on the prior motion” (*Ramos v City of New York*, 61 AD3d 51, 54 [1st Dept 2009] [internal quotations and citations omitted]).

Defendant explained that he had trouble getting access to relevant documents with the Supreme Court in Queens County in relation to his foreclosure case but now has obtained the documents he now attaches. The ongoing pandemic, which limited access to court records,

coupled with the fact that defendant is self-represented is a sufficient justification to consider the motion to renew. Certainly, defendant should have raised these arguments previously, but this Court prefers to decide cases on the merits.

Default Judgment

The Court adheres to its previous decision because defendant has not raised a meritorious defense. The fact is that there was a proceeding before OATH and defendant did not commence an Article 78 to challenge that decision nor does it appear from the OATH decision (or anything submitted by defendant) that he raised the issue he asserts now—that he is not the owner of the property—before the hearing officer at OATH (NYSCEF Doc. No. 9). Even if defendant could raise the issue of whether he was the proper person to pay the fine (which he cannot since this is not an Article 78) he cannot assert it for the first time in this action.

The Court also observes that although defendant claims he did not own the property because of the related foreclosure action where he lost the property, the OATH decision makes clear he held himself out as the owner. He was fined for various improper conduct, including that he was illegally operating a two-family house as a five-family house with SRO units. Although defendant denied anyone was living at the property, the OATH hearing officer credited the photos and the testimony of the inspector. And so although the property had been auctioned off, defendant continued to control it and his actions caused the violation.

Simply put, there is no basis, procedurally or on the merits, for this Court to vacate the default judgment entered against defendant.

The Foreclosure Action

The Court recognizes that defendant's argument that he was not the owner of the property is not completely without merit. The documents here show that there was a foreclosure action

against defendant in Queens with Index Number of 19442/2007. Somehow, it took seven years for the plaintiff (the lender) in the foreclosure case to get a judgment of foreclosure and sale in October 2014 (NYSCEF Doc. No. 24 at 52). The referee's report states that the auction took place on November 13, 2015 and that the successful bidder paid the \$100,000 down payment before assigning the bid to Crescent LLC (NYSCEF Doc. No. 29). But the closing did not take place until June 19, 2019 (*id.* at 11).

During the intervening years between the auction and the closing, the lender continued to rack up interest; according to the referee, the lender was due \$600,755.78 in interest just from the judgment until the closing (*id.* at 4). In other words, the lender's delay permitted it to claim well over half a million dollars on a \$1.04 million judgment because it failed to close for almost four years. And a judgment does not terminate a defendant's rights in a foreclosure action. That occurs when the gavel comes down at the foreclosure sale, which extinguishes the right of redemption. "The equity of redemption, which long predates the RPAPL, allows property owners to redeem their property by tendering the full sum at any point before the property is actually sold at a foreclosure sale" (*NYCTL 1999-1 Tr. v 573 Jackson Ave. Realty Corp.*, 13 NY3d 573, 579, 893 NYS2d 503 [2009]). Once the referee struck the gavel at the auction in May 2015, the defendant could no longer get the property back.

Defendant's claim that he did not own the property raises a key question with respect to foreclosures: what happens after an auction in a foreclosure case with respect to ownership of the property and who is responsible for charges, such as a violation from a city agency? The First Department has held that while the referee conducting the sale is responsible for paying the taxes, assessments and water charges which are liens on a property pursuant to RPAPL 1354(2), "the purchaser is required to pay the taxes that became liens on the property after the auction"

(NYCTL 1996-1 Tr. and Bank of New York v EM-ESS Petroleum Corp., 57 AD3d 304, 305, 869 NYS2d 71 [1st Dept 2008]).


Unfortunately for defendant, this is not a case where he moved on after losing the property in foreclosure. Had defendant extinguished all connection to the property and moved away, the Court might have questioned how a defendant in foreclosure case could be held responsible for a fine issued years after the foreclosure auction terminated his equity of redemption. In such a situation, the delay by the bidder and the lender in holding a closing beyond all reasonable time frames could justify questioning whether the foreclosure defendant should be responsible for fines related to the property. But the defendant here apparently continued to hold himself out as the owner by operating SROs without proper authorization.

In other words, the fine came from defendant's improper conduct and the fact that the foreclosure action was not resolved in a timely manner does not absolve defendant of his obligation to pay the fine.

Accordingly, it is hereby

ORDERED that the motion to renew by defendant is granted, and upon renewal, the Court adheres to its previous decision and denies the remaining portions of defendant's motion.

12/22/2020
DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE