

201 E. 61 LLC & I.R. 201 E 61st LLC v In Soo Park

2021 NY Slip Op 32261(U)

November 12, 2021

Supreme Court, New York County

Docket Number: Index No. 155229/2019

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 BLUTH PART 14

Justice

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201 EAST 61 LLC AND I.R. 201 E 61ST LLC,

Plaintiffs,

- v -

IN SOO PARK, SOO FAMILY CORP. D/B/A CAPTAIN
CLEANERS A/K/A CAPTAIN DRY CLEANERS, J'S DRY
CLEANERS CORP. D/B/A J'S CLEANERS

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108

were read on this motion to/for

VACATE - DECISION

The motion by plaintiffs to vacate this Court's dismissal order is denied.

In this dispute about a laundry not paying rent, plaintiffs seek to vacate this Court's order dismissing this case after plaintiffs ignored three consecutive court orders concerning discovery. Plaintiffs were previously awarded judgment on liability against all defendants except J's Dry Cleaners Corp. d/b/a J's Cleaners ("J's Cleaners"). Discovery then continued against this last remaining defendant.

However, following the discovery stipulation in September 2020, plaintiffs abandoned this case. The Court issued three court notices (NYSCEF Doc. Nos. 61, 62 and 63) in which it directed plaintiffs to upload something about discovery. The notices state that even a letter

stating that no agreement concerning discovery could be reached would have been sufficient. Instead, plaintiffs did nothing from February 2, 2021 (the date of the first notice) until September 13, 2021 (when it sent a letter complaining about the Court's dismissal on September 10, 2021).

Of course, what this timeline suggests is that counsel for plaintiffs was receiving emails from the Court (since he sent a letter just three days after the Court dismissed the case) and simply chose to ignore the Court's discovery directives for more than seven months. Now, plaintiffs move to vacate this order.

In support of the motion, plaintiffs focus on the fact that they secured a default judgment on liability against two of the defendants (the tenant and the guarantor) and insist they have a meritorious case against the remaining defendant (an entity plaintiffs allege merged with the tenant). However, the motion fails to cite a reasonable excuse for ignoring this case.

Counsel for plaintiffs admits that he received the February 2, 2021 court notice but "mistakenly believed that the next conference would be held as it had been in the past" (NYSCEF Doc. No. 69, ¶ 47) despite the fact that the notice specifically directed plaintiffs to upload something by a week before the conference (*see* NYSCEF Doc. No. 61). That notice stated that if nothing was submitted the conference would be adjourned (*id.*).

Yet, even after this conference was adjourned (as the Court said it would), counsel for plaintiffs insists that he "continued to mistakenly believe[] that the telephonic court conference that had been ordered during the last conference would still be held" (NYSCEF Doc. No. 69, ¶

48). Of course, there had been no order for a telephonic conference after the first missed conference and the Court's notice specifically stated that plaintiffs had failed to upload anything and directed something to be uploaded by June 2, 2021 (the week before the next conference) (NYSCEF Doc. No. 62).

After plaintiffs blew through the next deadline, the Court issued another notice that stated once again that plaintiffs had not complied with the Court's directives and that the failure to submit something (really, anything) by September 8, 2021 would result in the case being dismissed (NYSCEF Doc. No. 63). Counsel for plaintiffs conveniently contends that he simply missed this email.

The issue for this Court is all three notices warned that ignoring three *consecutive* notices would result in dismissal of the case. The notices could not be clearer. The Court is unaware how counsel for plaintiffs convinced himself that somehow there would be a future telephone conference despite the fact that each notice clearly stated that the failure to submit anything justified adjourning the conference. The entire point of the notice was to see if a conference was necessary (if the parties agreed to everything, then there was no need for a conference). And yet, counsel for plaintiffs sticks to his position that he simply thought there would be a future telephone conference at which he could resolve discovery issues. The basis for this belief is not apparent to this Court or to anyone with basic reading comprehension skills.

At the beginning of the pandemic, the Court held nearly all conferences over the phone. However, it soon became apparent that this strategy was inefficient for both the litigants and the


Court. Parties would call in not having spoken about discovery prior to the conference or having already agreed to what was outstanding (thereby wasting time under both scenarios). So the Court devised a new system that encouraged the parties to work together to resolve issues on their own time, and at their convenience, well before the conference. In the olden days, parties would work out what they could in the hallway and approach the Court with items that were unresolved; by setting up this system, the Court created a “virtual hallway.” If disputes remained, then a conference would be held. The bare minimum any party had to do was upload something (even a letter) apprising the Court about the status of discovery. Counsel for plaintiffs willfully ignored the Court’s notices about this system and kept his head buried in the sand for months, only to come up for air once the case was dismissed. Then, suddenly, he sprang into action and asked the Court via a letter to restore the case.

Plaintiffs’ conduct in this case obviously justifies dismissing the case against the appearing defendant J’s Cleaners as plaintiffs did not cite a reasonable excuse (*Langomas v City of New York*, 152 NYS3d 802, 2021 NY SlipOp 05776 [1st Dept 2021] [affirming the denial of a motion to vacate where plaintiff failed to appear for multiple conferences]). It is a closer question with respect to the two defaulting defendants. The judge previously assigned to this case awarded plaintiffs judgment on liability against these defendants and directed that there be an inquest at time of trial for J’s Cleaners. However, this Court sees no reason why plaintiffs should be entitled to an inquest now that they have abandoned the case. If plaintiffs were interested in an inquest, which was contingent upon moving the case against J’s Cleaners, then plaintiffs were obliged to pay attention to the discovery against J’s Cleaners; instead, plaintiffs abandoned it all. So while plaintiffs are correct that they were awarded a default judgment

against some defendants, they are not permitted to an inquest under these circumstances. Quite simply, the Court notices said that if you ignore three consecutive Court notices, the case will be dismissed; it did not say some parts of the case may be dismissed.

To be clear, this dismissal is without prejudice; the Court has made no rulings on the merits.

Accordingly, it is hereby ORDERED that the motion by plaintiffs to vacate the Court's order dismissing this case is denied.

<u>11/12/2021</u> DATE			 ARLENE BLUTH, J.S.C.	
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE