

<b>1107 Decatur St. LLC v Horah</b>
2021 NY Slip Op 32633(U)
December 2, 2021
Supreme Court, Kings County
Docket Number: Index No. 520491/2019
Judge: Carl J. Landicino
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At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 2<sup>nd</sup> day of December 2021.

PRESENT:

CARL J. LANDICINO, J.S.C.

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1107 Decatur Street LLC,  
  
*Plaintiffs,*

Index No.: 520491/2019

DECISION AND ORDER

- against -

SHERIAN HORAH, STEPHANIE O. DOWNING, SIDNEY M. DOWNING, JOHN R. PATTERSON, DEBORAH PHYLLIS DOWNING, TERRY MAURICE PATTERSON, SHAWN TYRONE PATTERSON, STEPHANIE T. PATTERSON, JAMAINE P. PATTERSON and JANE DOE, the last name being fictitious and unknown to plaintiff, the person or party intended being the child of Antoine D. Patterson,

Motion Sequence #2,

2021 DEC 10 AM 9:32  
KINGS COUNTY CLERK  
FILED

*Defendants.*

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**Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:**

Papers Numbered (NYSCEF)

- Notice of Motion/Cross Motion and Affidavits (Affirmations) Annexed ..... 23-55, 60, 62-66, 67, 69-70,
- Opposing Affidavits (Affirmations).....
- Reply Affirmation or Affidavit .....
- Memorandum of Law ..... 61, 68, 73, 77

Upon the foregoing papers, and after oral argument, the Court finds as follows:

The instant action was commenced by the Plaintiff, 1107 Decatur Street, LLC (hereinafter "the Plaintiff"), in relation to its claim for an accounting and the partition and sale of the premises known as 1107 Decatur Street, Brooklyn, N.Y. (the "Premises"). The Plaintiff allegedly owns a percentage of the Premises as a tenant in common with the Defendants, Sherian Horah, Stephanie O. Downing, Sidney M.

Downing, John R. Patterson, Deborah Phyliss Downing, Terry Maurice Patterson, Shawn Tyrone Patterson, Stephanie T. Patterson, Jamaine P. Patterson and Jane Doe, the last name being fictitious and unknown to plaintiff, the person or party intended being the child of Antoine D. Patterson (hereinafter referred to individually or collectively as the "Defendants").

The Plaintiff now moves (motion sequence #1) by notice of motion for an Order providing for the following: (1) an order pursuant to CPLR 3025(b) granting it leave to serve an amended complaint that serves to amend the caption in order to identify the name of "Jane Doe" as Alaisa Patterson; and (2) pursuant to CPLR 3215(d) granting a default judgment against Alaisia Patterson, who has allegedly failed to answer the Complaint or otherwise appear in this action.

The Defendants move (motion sequence #2) for an order pursuant to CPLR 3025(b) granting them leave to serve an amended answer containing additional affirmative defenses and a counterclaim. The Defendants contend that the proposed affirmative defenses and counterclaim have merit and include (1) failure to state a claim; (2) that the equities favor the Defendants; (3) adverse possession; (4) unjust enrichment; (5) constructive trust; (6) laches; (7) the existence of Nellie O. Chesson's will; and, (8) a counterclaim for trespass to chattels and/or conversion.

Alaisia Patterson s/h/a Defendant "Jane Doe" also moves (motion sequence #3) seeking an order that the case caption be amended to add Alaisa Patterson as a defendant and also denying that aspect of motion sequence #1 that requests a default judgment as against Defendant Alaisa Patterson. Alaisa Patterson contends that she has both a reasonable excuse and a meritorious defense to the complaint and that there is a strong policy in favor of resolving disputes such as this on the merits.<sup>1</sup>

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<sup>1</sup> As an initial matter, the Plaintiff's motion (sequence #1) is granted as it relates to granting them leave to serve an amended complaint that amends the caption to add Alaisa Patterson as a defendant in place of "Jane Doe." See *Allan v. DHL Exp. (USA), Inc.*, 99 A.D.3d 828, 832, 952 N.Y.S.2d 275, 280 [2d Dept 2012].

Motion Sequence #1

The Plaintiff seeks a default judgment as against Defendant Alaisia Patterson. The Plaintiff contends that this motion should be granted as the Plaintiff has shown that Defendant Alaisia Patterson was properly served and thereafter failed to timely answer. However, “[t]o defeat a facially adequate CPLR 3215 motion, a defendant must show either that there was no default, or that it has a reasonable excuse for its delay and a potentially meritorious defense.” *Fried v. Jacob Holding, Inc.*, 110 A.D.3d 56, 60, 970 N.Y.S.2d 260, 263 [2d Dept 2013]. “Whether there is a reasonable excuse for a default is a discretionary, *sui generis* determination to be made by the court based on all relevant factors, including the extent of the delay, whether there has been prejudice to the opposing party, whether there has been willfulness, and the strong public policy in favor of resolving cases on the merits.” *Torres v. DeJesus*, 151 N.Y.S.3d 629, 630 [2d Dept 2021], quoting *Harczark v. Drive Variety, Inc.*, 21 AD3d 876, 876, 800 N.Y.S.2d 613, 614 [2d Dept 2005].

In the instant matter, Defendant Alaisia Patterson has provided sufficient evidence in her affidavit regarding her excuse for her failure to appear and the meritorious defenses she claims she has to the action. In her affidavit Defendant Alaisia Patterson states that “[o]n February 6, 2020, my great-grandfather George Davis died. On or around April 1, 2020, my great-grandmother Mattie Green died.” She also states that “[u]ntil April 5, 2021, I did not know I was being sued.” While she states that she later realized that her mother knew, she also states that “my mother believed that Uncle Terry and the other Defendants were representing whatever interest I might have in the Action.” (See Defendant Alaisia Patterson’s Motion, Affidavit). What is more, Defendant Alaisia Patterson also raises meritorious defenses to the Plaintiff’s equitable claim for partition. *See Guerrero v. Tooker*, 128 A.D.3d 896, 897, 10 N.Y.S.3d 263, 264 [2d Dept 2015].

Further, and in any event, Defendant Alaisa Patterson's name is not indicated in the caption. Principles of fairness and due process require this court to afford Alaisa Patterson an opportunity to answer the complaint and have the matter addressed on the merits. As a result, the court denies the Plaintiff's application for a default judgment.<sup>2</sup>

Motion Sequence #2

Turning to the merits of the Defendants' application to amend the answer, the Court finds that the Defendants have provided sufficient support for their application. In general, "[m]otions for leave to amend pleadings should be freely granted, absent prejudice or surprise directly resulting from the delay in seeking leave, unless the proposed amendment is palpably insufficient or patently devoid of merit." *Degregorio v. Am. Mfrs. Mut. Ins. Co.*, 90 A.D.3d 694, 695-96, 934 N.Y.S.2d 457, 460 [2<sup>nd</sup> Dept, 2011], quoting *Sinistaj v. Maiër*, 82 A.D.3d 868, 869, 918 N.Y.S.2d 196, 198 [2<sup>nd</sup> Dept, 2011]. "Additionally, '[t]he legal sufficiency or merits of a pleading will not be examined unless the insufficiency or lack of merit is clear and free from doubt.'" *Lucido v. Mancuso*, 49 A.D.3d 220, 227, 851 N.Y.S.2d 238, 243 [2<sup>nd</sup> Dept, 2008], quoting *Sample v. Levada*, 8 A.D.3d 465, 779 N.Y.S.2d 96 [2<sup>nd</sup> Dept, 2004].

As the Defendants argued in their memorandum of law, the proposed affirmative defenses relate directly to the Plaintiff's claim that the Premises should be subject to partition and sale. What is more, there is no prejudice to the Plaintiff, and "[p]rejudice to the adverse party is the main barrier which prevents granting a motion to amend an answer." *St. Paul Fire & Marine Ins. Co. v. Town of Hempstead*, 291 A.D.2d 488, 489, 738 N.Y.S.2d 226 [2d Dept 2002], quoting *Bernstein v. Spatola*, 122 AD2d 97, 99,

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<sup>2</sup> Given that motion sequence #3 sought to amend the caption to add Defendant Alaisia Patterson and opposed the Plaintiff's default application, that motion is granted to that extent.



504 N.Y.S.2d 686 [2d Dept 1986]. As a result, the Court grants the Defendants' application for leave to amend their answer.

Based on the foregoing, it is hereby ORDERED as follows:

The Plaintiff's motion (motion sequence #1) is granted solely to the extent that the caption is amended to add Alaisa Patterson as a named defendant and replace Jane Doe.

The caption, as amended, shall now read as follows:

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1107 Decatur Street LLC,

Index No.: 520491/2019

*Plaintiffs,*

- against -

SHERIAN HORAH, STEPHANIE O. DOWNING, SIDNEY M. DOWNING, JOHN R. PATTERSON, DEBORAH PHYLLIS DOWNING, TERRYMAURICE PATTERSON, SHAWN TYRONE PATTERSON, STEPHANIE T. PATTERSON, JAMAINE P. PATTERSON and ALAISA PATTERSON,

*Defendants.*

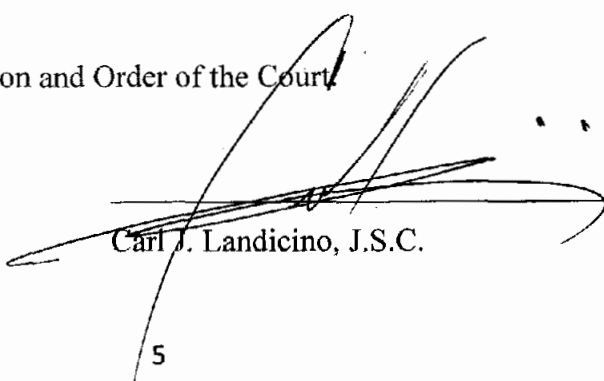
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The Plaintiff shall have 30 days from entry of this Decision and Order to file and serve its amended complaint. Insofar as no proposed amended complaint has been annexed to the papers, the amended complaint shall only serve to replace Jane Doe with Alaisa Patterson.

The Defendants' motion (motion sequence #2) to amend their answer is granted. The Defendants shall have 30 days from receipt of the amended complaint to file and serve the amended answer as reflected in the motion papers, which will include the amended caption.

Defendant Alaisa Patterson's motion (motion #3) is granted. Defendant Alaisa Patterson shall have have 30 days from receipt of the amended complaint to file and serve an answer.

The foregoing constitutes the Decision and Order of the Court.

ENTER:

  
Carl J. Landicino, J.S.C.

2021 DEC 10 AM 9:32  
KINGS COUNTY CLERK  
FILED