

Nestle Realty Holding, Corp. v Hourani

2023 NY Slip Op 31733(U)

May 23, 2023

Supreme Court, New York County

Docket Number: Index No. 162610/2014

Judge: Melissa A. Crane

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This opinion is uncorrected and not selected for official publication.

Sequence No. 01 was not required; that Mr. Glasser himself did not attend that hearing; that the “judgment [in this case] was entered against [Hourani] personally and this case is against a company called [Alltags Inc.], ran by [Hourani]”; and that Hourani did not receive a notice of the judgment from any party (Doc 70 [Hourani Aff.]).

In opposition, Nestle argues that Hourani waited three years to move to vacate the judgment (Doc 73 [Oliveri Affirmation], ¶ 34). Nestle contends that it served and e-filed Motion Sequence No. 01 on Hourani, by NYSCEF, on July 5, 2017, and that defendant’s counsel contacted Nestle’s counsel on July 18, 2017, a day before the motion’s initial return date, to request additional time to file opposition (*id.*, ¶¶ 23, 25). Nestle also contends that the parties later stipulated to adjourn Motion Sequence No. 01 to August 1, 2017, with opposition due by July 25, 2017, and that Hourani nevertheless failed to oppose the motion by that date (*id.*, ¶¶ 26-27). Nestle further argues that Hourani still failed to submit any opposition papers to the motion in Motion Sequence No. 01, even after the court adjourned the motion to October 17, 2017 (*id.*, ¶¶ 28-29).

Discussion

“A party seeking relief from an order or judgment on the basis of excusable default pursuant to CPLR 5015(a)(1) must provide a reasonable excuse for the failure to appear and demonstrate the merit of the cause of action or defense” (*Dormitory Auth. of State v M.T.P. 59 St. LLC*, 103 AD3d 602 [1st Dept 2013]; *see also* CPLR 5015[a]; *Santiago v. Valentin*, 125 AD3d 459 [1st Dept 2015]). Under CPLR 5015(a), the court may set aside a judgment on the basis of excusable default if the defaulting party moves “within one year after service of a copy of the judgment or order with written notice of its entry.”

Here, there is no proof that the judgment was served with notice of entry upon Hourani. Nevertheless, the court is constrained to deny the motion because Hourani has failed to provide a reasonable excuse for his default or establish that he has a meritorious defense.

There is “strong public policy in favor of deciding cases on their merits” in New York, and law office failure can, under some circumstances, constitute a reasonable excuse for the purposes of a CPLR 5015(a) motion (*see Santiago v Valentin*, 125 AD3d 459, 459-460 [1st Dept 2015] [finding that plaintiff established a reasonable excuse for “the failure to respond to defendant's summary judgment motion” because it “was purely the result of a misunderstanding by his counsel that is tantamount to law office failure”]). In *Santiago*, the defaulted plaintiff demonstrated, by an attorney’s affirmation, that “that the failure to submit opposition was due to a delay in receiving an updated medical report from plaintiff's treating physician” (*id.*). “Further, plaintiff explained that after defendant denied his third request to stipulate to an adjournment, he believed the only recourse was to wait for a decision and order from the court, and thereafter, make a motion to vacate the default judgment” (*id.*). Finally, “plaintiff submitted an affidavit from his treating physician, which demonstrated that he has a potentially meritorious cause of action” (*id.*).

Here, the record establishes that Hourani’s attorney requested additional time to file opposition to the summary judgment motion (Motion Sequence No. 01) only a single day before its initial return date. The parties then entered into a stipulation that adjourned the motion to August 1, 2017, and defendants were given additional time to submit opposition (Doc 86 [7/18/17 Stipulation]). Defendants did not file opposition. The court then adjourned the motion from August 1, 2017 to October 17, 2017 (Doc 89 [eCourts Appearance Details]). Hourani,

again, failed to submit any opposition to the motion, and failed to appear at the scheduled appearance (*see* Doc 57 [MS 01 Decision]).

Hourani submits only his own affidavit, an exhibit that lists his attorney's name and contact information, and a copy of a subpoena served on him (Docs 70-71). He does not submit an affidavit or affirmation from his attorney attesting to the purported law office failure. Hourani states that he "was told by [his] lawyer Jack Glasser 'You are not required to appear for this hearing [on MS 01, and' . . . Mr. Jack Glasser did not appear as well" (Doc 70).

Even assuming that Hourani has established a reasonable excuse for his failure to oppose the motion for summary judgment, he does not demonstrate that he has a viable defense. Hourani asserts that the judgment was entered against him "personally and this case is against a company called ALLTAGS INC. ran by defendant" Hourani (*id.*). Under the Assignment and Assumption of Lease (Doc 25), "Assignee" includes both Alltags Inc. and Georges Hourani (*id.*). Hourani also signed that agreement twice, both for himself and for Alltags Inc. as its president (*id.*). In this complaint, plaintiff sought to collect unpaid rent and other amounts from both defendants under the 2009 lease assignment and an unpaid stipulated judgment entered against defendant "Georges Hourani D/B/A ALLTAGS INC." in Bronx County Civil Court (Doc 26). Under the 2009 assignment, both Hourani and Alltags Inc. are liable to plaintiff for unpaid rent and additional rent (Doc 25).

Thus, Hourani has not established a meritorious defense.

The court has considered the parties' remaining contentions and finds them unavailing.

Accordingly, it is

ORDERED that Motion Seq. No. 02 is denied; and it is further

ORDERED that there shall be no further motion practice without prior notice to the court.

5/23/2023

DATE



MELISSA A. CRANE, 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