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Morales v. Balsam

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Morales v Balsam
2020 NY Slip Op 51176(U)
Decided on October 8, 2020
Civil Court Of The City Of New York, Bronx County
Ibrahim, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on October 8, 2020

Civil Court of the City of New York, Bronx County

<p>Luis Morales, Petitioner,</p> <p>against</p> <p>Arnold Balsam and First Metropolitan Realty, Respondent, Department of Housing Preservation & Development of the City of New York, Co-Respondents.</p>
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13524/2020

Todd Rothenberg, Esq.

Attorneys for Respondents

Via email: boris@toddrothenbergesq.com [Boris Lepikh, Esq.]

&

Bronx Legal Services

Attorneys for Petitioner

echen@lsnyc.org [Eugene Y. Chen, Esq.]

&

DHPD

Via email: sylvests@hpd.nyc.gov [Symone Sylvester, Esq.]

Shorab Ibrahim, J.

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in review of this motion.

Papers Numbered

Order to Show Cause With Affidavit and Exhibits 1

Answering Affirmation With Affidavit and Exhibits 2

After oral argument and upon the foregoing cited papers, the decision and order on this motion is as follows:

BACKGROUND & PROCEDURAL POSTURE

This matter was commenced by order to show cause dated July 7, 2020, with petitioner seeking an order to correct the class "C" violation— "Fire Damage in the Entire Apartment"—that had been placed on October 22, 2019. Respondents failed to appear on July 20, 2020, July 31, 2020 and August 12, 2020. On August 12, 2020, the court [Hon. B. Tovar] found respondents were properly served and issued a default Order and Notice of Violations. The Order affords respondents until September 4, 2020 to correct the violation(s).

Respondents now move to vacate the Order to Correct and petitioner opposes.

DISCUSSION

In a Housing Part ("HP") proceeding, defenses to an order to correct are few: lack of [*2]standing, lack of jurisdiction, completed repairs, that the conditions are not code violations, that a notice of violation is facially insufficient, that a respondent is no longer an owner, and economic infeasibility. ([D'Agostino v Forty-Three E. Equities Corp.](#), 12 Misc 3d 486, 489-490 [Civ Ct, New York County 2006] *aff'd on other grounds*, 16 Misc 3d 59 [App Term, 1st Dept 2007]; [Vargas v 112 Suffolk St. Apt. Corp.](#), 66 Misc 3d 1214[A] at *3 [Civ Ct, New York County 2020]). Respondents fail to articulate any of these defenses. As there is no meritorious defense to the order to correct, the motion must be denied. (see CPLR § 5015(A); [Leader v Parkside Group](#), 174 AD3d 420, 421 [1st Dept 2019] (The preference for deciding cases on the merits does not justify vacating a default judgment where the moving party fails to satisfy the two-prong test of showing a reasonable excuse and a meritorious defense)).

Having denied the motion because of respondents' failure to offer a meritorious defense, the court only discusses excusable default arguments because of their uniqueness.

Respondents, for their part, argue that they have an excusable default *and* that they do not need to show excusable default at all when seeking relief under CPLR § 317. Reliance on CPLR § 317 is misplaced since respondents received the papers in time to answer. ([Fisher v Lewis Const. NYC Inc.](#), 179 AD3d 407, 408 [1st Dept 2020] (vacatur denied where

respondent had actual notice in time to defend)). In fact, they acknowledge "respondents received said order to show cause" and only defaulted due to law office error.

As to law office error, the allegation is entirely conclusory and incredible:

"We inadvertently filed the order to show cause away in our office and awaited a Skype invite This law office error was unintentional and attributable to the new format of utilizing EDDS, NYSCEF and other electronically provided methods of communication "

While some confusion with the new technologies is understandable, the attorney affirmation makes no mention of whether their office called the court clerk to arrange the teleconference upon receipt of the papers [as directed in the order to show cause] They do not detail their calendaring process, so that this court could determine if the "error" claimed here was reasonable In short, counsel gives no indication of *anything* done to ascertain the case status ([*see Deep v City of New York, 183 AD3d 586*](#) [2nd Dept 2020] (law office failure excuse not supported by detailed and *credible* explanation of the default) [emphasis added]; [*Galaxy General Contracting Corp. v 2201 7th Ave. Realty LLC, 95 AD3d 789*](#), 790 [1st Dept 2012] (claims of law office error which are conclusory and unsubstantiated cannot excuse default)).

Respondents also cite to Civil Court Directives and Procedures 213 ("DRP-213") and argue that it ought to have prevented entry of the default. DRP-213 was issued on August 12, 2020 by the Hon. Anthony Cannataro, the Administrative Judge for the New York City Civil Courts.

Movant's counsel states, "it should be noted that as of August 12, 2020 the Civil Court was not taking default of any kind," citing to paragraph 2(A)— "Appearance Defaults."

It is abundantly clear that DRP-213 does not have any effect on this matter. DRP-213's subject heading is "Management of Pre-Pandemic Eviction Proceedings in the New York City Civil Court." The instant proceeding is not "pre-pandemic" having been commenced on or about July 7, 2020 [DRP-213 conveniently defines "pre-pandemic" proceedings as those pending prior to March 17, 2020]. Nor is this an "eviction" proceeding. Eviction proceedings are those where an eviction is sought—meaning the removal of a tenant or occupant from a property. Such relief is not available in this case.

CONCLUSION

Based on the foregoing, respondents' motion to vacate the August 12, 2020 Order to Correct is denied. This constitutes the decision and order of the court.

Copies of this Decision/Order will be emailed to the parties by the court.

Dated: October 8, 2020

Bronx, NY

SO ORDERED,

/S/

SHORAB IBRAHIM, JHC

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