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Parrales v. 800 Realty LLC

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[*1]

Parrales v 800 Realty LLC
2020 NY Slip Op 51446(U)
Decided on November 19, 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This opinion is uncorrected and will not be published in the printed Official Reports.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 November 19, 2020

Civil Court of the City of New York, Bronx County

<p>Patricia I Parrales, Petitioner,</p> <p>against</p> <p>800 Realty LLC, Respondent, DEPARTMENT OF HOUSING PRESERVATION & DEVELOPMENT OF THE CITY OF NEW YORK, Co-Respondents.</p>
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7455/2020

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&

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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 Exhibit 1

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

BACKGROUND & PROCEDURAL POSTURE

This *pre-pandemic* Housing Part proceeding ("HP") was commenced by order to show cause dated February 14, 2020 and returnable March 6, 2020. (*see Morales v Balsam*, 2020 NY Slip Op 51176[U] [Civ Ct, Bronx County 2020] citing to Civil Court Directives and Procedures 213 ("DRP-213")).

Patricia Parrales ("petitioner") sought an order to correct conditions in the subject premises. On March 6, 2020, respondent did not appear. The Open Violation Summary Report dated March 3, 2020 lists twenty-three (23) violations placed between November 19, 2019 and February 21, 2020, including fourteen (14) "Class B" and three (3) "Class C" violations. Based on the violations and petitioner's affidavit of service, the court entered a Default Order to Correct.

Respondent now moves to vacate their default pursuant to CPLR § 5015 and/or CPLR § [*2]317. Respondent claims they are not properly named in the proceeding. They claim the only notice they received was a copy of the default order on or about May 17, 2020. They also allege petitioner has failed to provide access for completion of repairs, if any exist.

The court notes that petitioner did not appear on November 17, 2020. DHPD, however, orally opposed petitioner's motion.

DISCUSSION

To obtain relief from its default respondent must show both an excusable reason for its non-appearance and offer a meritorious defense. (CPLR § 5015(a)(1); [Cheri Restaurant Inc. v Eoche](#), 144 AD3d 578, 579, 42 NYS3d 113 [1st Dept 2016] [internal citations omitted]). Turning first to a meritorious defense, respondent offers none.

In an HP proceeding, defenses to an order to correct are few: lack of 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. Lack of access is not a defense to an order to correct. ([see Allen v 219 24th Street LLC](#), 67 Misc 3d 1212[A] at *6, 2020 NY

Slip Op 50513[U] [Civ Ct, New York County 2020]; Even if it were a defense, the court must disregard respondent's conclusory submissions (see Alex Guerrero affidavit at par. 7 and 8). (*Iandoli v Lange*, 35 AD2d 793, 794, 315 NYS2d 752 [1st Dept 1970] (conclusory affidavits lack probative value); *Prakhin v Fulton Towers Realty Corp.*, 122 AD3d 610, 602, 996 NYS2s 85 [2nd Dept 2014]). The lack of any date petitioner allegedly refused access is more striking given that violations had been placed at least three months prior to this case's commencement and some six months prior to respondent allegedly receiving the order to correct [\[FNI\]](#) 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)).

As to the allegation that respondent is improperly named as 800 Realty, LLC rather than 800 Realty Corp, the court notes that respondent does not claim any prejudice by the misstatement. As no prejudice is alleged or established, the technical defect in the petition may be amended. ([see Larchmont Pancake House v Board of Assessors](#), 33 NY3d 228, 241-242, 100 NYS3d 680 [2019] [Wilson, J., dissenting] ([t]he Legislature has repeatedly directed the courts to ignore defects in petitions, complaints, and pleadings "if a substantial right of a party is not prejudiced"). These provisions embody "an enlightened system of civil procedure and eschews the elevation of form over substance") [internal citations omitted]; [Coalition Houses L.P. v Bonano](#), 12 Misc 3d 146[A], 2006 NY Slip Op 51516[U] [App Term, 1st Dept 2006]).

Further, the court notes that the improper name may result from respondent's failure to register with DHPD. Respondent's exhibit 'B' is a deed dated October 7, 2019. It documents the [\[*3\]](#)property's transfer from Silas Metro Holding Corp. to 800 Realty Corp. On March 3, 2020, almost five (5) months after the transfer, respondent had not filed a proper DHPD registration. As of November 18, 2020, the DHPD website notes, "This Property is Not Currently Validly Registered With HPD."

The court thus turns to respondent's allegation it was not properly served with the order to show cause commencing the action. Respondent's affidavit in support of the motion does not state that service was improper; rather, Alex Guerrero states "the landlord did not receive notice of the commencement of the instant proceeding by mail, or any other means." First,

there is no requirement that respondent actually receive the pleadings. (*City of New York v Chemical Bank*, 122 Misc 2d 104, 106, 470 NYS2d 280 [Sup Ct, New York County 1983], citing *Dobkin v Chapman*, 21 NY2d 490, 289 NYS2d 161 [1968]; *BH NJ Realty Corp. v Rivera*, 144 Misc 2d 241, 243, 543 NYS2d 883 [Civ Ct, New York County 1989]). In fact, service by mail is complete, regardless of delivery, when the mailing itself is proper. (*European American Bank v Abramoff*, 201 AD2d 611, 612, 608 NYS2d 233 [2nd Dept 1994], citing *14 Second Ave Realty Corp v Szalay*, 16 AD2d 919, 229 NYS2d 722 [1st Dept 1962]). Additionally, a proper challenge to service must be substantiated by specific, detailed facts that contradict the affidavit of service. ([Wells Fargo Bank, N.A. v Decasare, 154 AD3d 717](#), 62 NYS3d 446 [2nd Dept 2017]; *American Sav. & Loan Ass'n v Twin Eagles Bruce, Inc.*, 208 AD2d 446, 447, 617 NYS2d 717 [1st Dept 1994]; [Northern v Hernandez, 17 AD3d 285](#), 286, 795 NYS2d 194 [1st Dept 2005]). Here, respondent says nothing to contradict the affidavit of service. Respondent does not even dispute that the order to show cause was properly mailed to a proper address.

In any event, respondent's failure to register with DHPD severely limits even a properly pled jurisdictional defense. Owners are required to file registration statements with DHPD. (see HMC § 27—2097[c] [providing that owner must file annual MDR statement]). New owners are required to file a registration within five (5) days of the change in ownership. [\[FN2\]](#) (see HMC § 27—2099). It is on this specific issue that DHPD's counsels orally opposed respondent's motion. This court concludes that even if respondent were not served at a proper address, it is only because it failed to properly register. Under these circumstances, the default cannot be excused. (*Department of Housing Preservation and Development of the City of New York v 2515 LLC*, 6 Misc 3d 1039[A] at *5, 2005 NY Slip Op 50347[U] [Civ Ct, New York County 2005] ("Given that respondent's failure to update her MDR statement violated the HMC and that those violations caused her to default, the court may not grant her motion to vacate the default judgment.")).

For these same reasons, respondent cannot rely on CPLR § 317 for relief. First, CPLR § 317 requires a meritorious defense and respondent has failed to allege one. Additionally, there being no other explanation for the failure to register with DHPD, the court infers that respondent did so purposefully, thus avoiding notice of this case—if, in fact, notice was not received. (see *2515 LLC, supra*).

CONCLUSION

Notwithstanding petitioner's failure to appear and oppose, respondent's motion to vacate [*4]the March 6, 2020 default order to correct is denied in all respects. This constitutes the Decision and Order of the court. [FN3]

Copies of this decision shall be emailed to all parties.

Dated: November 19, 2020

SO ORDERED,

Bronx, NY

/S/

SHORAB IBRAHIM, JHC

Footnotes

Footnote 1: Respondent does not dispute receipt of notice of violations. Respondent's counsel could not tell this court on November 17, 2020 whether petitioner had refused to grant access on interim access dates of November 11, 12 and 13, 2020.

Footnote 2: It appears, based on the deed, that respondent was required to file a registration with DHPD by October 22, 2019, almost five (5) months *before* any delay could be attributed to the current pandemic.

Footnote 3: After the case was argued, the court received an email wherein it is acknowledged the repairs have been completed. That respondent complied with the order to correct is not a reason to vacate the default.

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