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### Enclave on Oxford, LLC v. Rodriguez

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[\*1]

<b>Enclave on Oxford, LLC v Rodriguez</b>
2022 NY Slip Op 50235(U)
Decided on April 5, 2022
Civil Court Of The City Of New York, Bronx County
Ibrahim, J.
Published by <a href="#">New York State Law Reporting Bureau</a> pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on April 5, 2022

Civil Court of the City of New York, Bronx County

<p style="text-align: center;"><b>Enclave on Oxford, LLC, Petitioner,</b></p> <p style="text-align: center;"><b>against</b></p> <p style="text-align: center;"><b>Deleamar A Rodriguez &amp; Carla Nogueira Greeb, Respondents.</b></p>
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L & T Index No. 32753-2019

For Petitioner: Jason Blau, Esq.

For Respondent Carla Nogueira Greeb: Neighborhood Association for Inter-Cultural Affairs (N.A.I.C.A.)

Respondent Deleamar A. Rodriguez, Pro-Se

Shorab Ibrahim, J.

Recitation, as required by CPLR 2219(a), of the papers considered in review of petitioner's motion to restore the case to the calendar and leave to obtain a warrant of eviction and execution of same as to Deleamar A. Rodriguez and entry of a final judgment of possession, issuance of a warrant of eviction and leave to execute same as to Carla Nogueira Greeb: NYSCEF DOCS. No. 1 through 17.

This non-payment proceeding was commenced by petition dated July 15, 2019, seeking \$26,371.33 in rental arrears. Respondent Greeb (Greeb) answered on August 9, 2019 and the matter was made returnable on August 14, 2019. On August 14, 2019, Greeb appeared, tendered a check, and stipulated, without reservation, that the check paid rent through August 19, 2019. (*see* August 19, 2019 stipulation and affidavit in support of Motion Seq. 1).

It turns out that the check tendered in court on August 14, 2019 was not accepted for deposit because it had been damaged by Greeb, necessitating petitioner's motion seeking a judgment and warrant against both respondents. (*see* Motion Seq. 1). After adjournments, respondent Rodriguez (Rodriguez) stipulated to final judgment and issuance of a warrant of eviction (as to him), agreeing that \$31,710.36 was due through February 29, 2020. Greeb did not appear and was held in default, with petitioner required to seek a judgment and warrant through the clerk's office.

Petitioner thereafter made two (2) motions attempting to obtain relief then available under various Administration Orders and Court Directives. (*see* Motions Seq. 2 and 3). These motions were withdrawn. [\[FN1\]](#)

Currently, where a judgment of possession was issued prior to March 17, 2020, DRP 217 requires a petitioner to make a motion on notice seeking issuance of a warrant of eviction. (*see Hernandez v Vasquez*, [73 Misc 3d 1213\(A\)](#), 2021 NY Slip Op 51034(U) [Civ Ct, Bronx County [\*2]2021]; A/O 34/22, effective January 16, 2022) [\[FN2\]](#). Further, DRP 222 seemingly requires a motion on notice when petitioner seeks entry of a default judgment no matter when the default occurred.

Petitioner's pending motion (Seq. 4) seeks, *inter alia*, a default judgment against Greeb and issuance of a warrant of eviction as to both respondents. (*see* DRP 217 and 222).

While the current motion was pending, Greeb obtained counsel. Counsel, during his appearances, has made general references to a divorce action between the respondents which might stay this case. However, no proof of a stay has been submitted to the court over counsel's two appearances so far. On March 31, 2022, the court reserved decision on petitioner's motion. [\[FN3\]](#)

To vacate a default, even pre-judgment, the defaulting party must show both an excusable reason for the non-appearance and a meritorious defense. (*see Morrison Cohen LLP v Fink*, [81 AD3d 467](#), 468, 917 NYS2d 155 [1st Dept 2011]; [KI 12, LLC v Joseph](#), [137](#)

[AD3d 750](#), 26 NYS3d 573 [2nd Dept 2016]).

Greeb, to date, has not alleged any reason for her prior non-appearances after answering the petition and signing a stipulation of settlement. ([see Xiaoyong Zhang v Jong, 195 AD3d 435](#), 2021 NY Slip Op 03432 [1st Dept 2021] (assertions supporting excusable reason for default are to be in an affidavit)).

Additionally, Greeb has not, even orally, offered a meritorious defense to the rental claim. There is a balance of \$134,769.02 due through March 2022 [February 2020 stipulation at \$31,710.36 plus 25 months (March 2020 — March 2022) at \$7,927.59 per month less ERAP payment of \$95,131.08 in November 2021]. While Greeb's 2019 answer did allege several defenses, the court notes that *both* respondents executed stipulations that did not include any reserved defenses. ([see Wyandanch Comm. Dev. Corp. v Nesbitt](#), 2003 NY Slip Op 51017(U) [App Term, 9th & 10th Jud. Dists. 2003]).

In failing to oppose the motion, respondents have not raised any factual issue. ([see PV Holding Corp. v AB Quality Health Supply Corp.](#), [189 AD3d 645](#), 647, 2020 NY Slip Op 07725 [1st Dept 2020]).

Based on the above, petitioner's motion is granted as follows: Ordered, that a judgment of possession shall enter in petitioner's favor against Greeb; [\[FN4\]](#) Ordered, that petitioner is granted leave to obtain a warrant of eviction against *both* respondents through proper application with the warrant clerk. ([see](#) DRP 222 and DRP 217); and Ordered, that execution of any issued warrant of eviction is stayed ten (10) days from today. [\[FN5\]](#)

This constitutes the Decision and Order of the court. A copy will be posted on NYSCEF and emailed to the parties.

Dated: April 5, 2022  
Bronx, NY  
SO ORDERED,  
/S/  
SHORAB IBRAHIM, JHC

### Footnotes

[Footnote 1:](#) This matter, for unknown reasons, appeared on the part J calendar on or about

March 24, 2022. This was error, apparently by the court.

**Footnote 2:**ExhibitA-AO34-22.pdf (nycourts.gov)

**Footnote 3:**Rodriguez did not appear on March 31, 2022 or otherwise oppose the motion. Based on conversations with counsels, it appears that Rodriguez no longer resides at the subject premises.

**Footnote 4:**Though this court has obtained sufficient jurisdiction to also enter a money judgment against Greeb, petitioner seeks only a judgment of possession against her.

**Footnote 5:**The earliest eviction date (EED) is April 16, 2022.

[Return to Decision List](#)