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S & H REALTY 1 LLC v. SADOK

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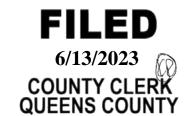
NYSCEF DOC. NO. 92

INDEX NO. 717500/2022

RECEIVED NYSCEF: 06/13/2023

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY



Present: HONORABLE <u>DENISE N. JOHNSON</u> IAS Part 11

Justice

-----X

S & H REALTY 1 LLC			Index No.: 717500/2022
	Plaintiff(s),		
			Motion Date: 3/27/23
- and -			Motion Cal. No.: 8
MUSTAPHA HADJ SADOK, HASNAA ELANSSRY, JOHN DOE, JANE DOE			Motion Seq. No: 2
	Defenda	ınt(s).	

-----X

The following papers numbered EF 29 - 65 read on this motion by Defendant MUSTAPHA HADJ SADOK in this action for an order Vacating the default judgment against Defendants and denying Plaintiff's Order to Show Cause for summary Judgment.

	Papers
	Numbered
Order to Show Cause-Affirmation - Exhibits - Service	EF 29-52
Affirmation in Opposition - Exhibits - Service	EF 53 – 65

Upon the foregoing papers it is **ORDERED** that as follows:

This is an action of ejectment in which Plaintiff S & H REALTY 1 LLC ("S&H"), the owner of the real property known as 84-84 127th Street, Apartment #2 a/k/a Floor #2, Kew Gardens, New York 11415 ("Property"), commenced this action against Defendants MUSTAPHA HADJ SADOK ("Sadok"), HASNAA ELANSSRY, "JOHN DOE" and "JANE DOE" to recover possession of the property with the filing of an Order to Show cause, Notice of Petition, and Petition. Defendant now moves to vacate the Default Judgment granted against Defendants in this

FILED: QUEENS COUNTY CLERK 06/13/2023 09:23 AM

NYSCEF DOC. NO. 92

INDEX NO. 717500/2022

RECEIVED NYSCEF: 06/13/2023

action and upon vacating the Default Judgment seeks an order denying Plaintiff's Order to Show

Cause for Summary Judgment.

It is well settled that a party seeking to vacate an order entered upon his or her default in

opposing a motion must demonstrate both a reasonable excuse for the default and a potentially

meritorious opposition to the motion (see CPLR 5015[a][1]; Seaman v New YorkUniv., 175

AD3d 1578, 1579). As New York courts have ruled that there is a strong public policy in favor

of resolving cases on the merits Supreme court has the broad discretion to vacate a default where

there is a showing of a lack of prejudice to the plaintiff, a lack of willfulness on the part of the

defendant, and a meritorious defense (see Jeffrey L. Rosenberg & Assoc., LLC v Lajaunie, 35

AD3d 668, 824 NYS2d 920 [2006]; Jolkovsky v Legeman, 32 AD3d 418, 819 NYS2d 561

[2006]; Rottenberg v Preferred Prop. Mgt., Inc., 22 AD3d 826, 803 NYS2d 177 [2005]; Yonkers

Rib House, Inc. v 1789 Cent. Park Corp., 19 AD3d 687, 688, 799 NYS2d 62 [2005].

Here, judgment was granted based upon Defendant's failure to oppose an Order to Show

Cause seeking Summary Judgment that was e-filed and served via the New York State Electronic

Filing System ("NYSCEF"). While it is apparent to this court that service was effectuated in the

manner directed pursuant to the Signed Order of Justice McDonald dated February 3, 2023, for

service via NYSCEF to be valid against a party the party to be served must affirmatively consent

to e-filing. (see NYCRR §202.5-b) In the instant matter, it is clear that none of the Defendants

consented to electronic service through NYSCEF. As there was no consent to service through

NYSCEF service through these means cannot constitute actual notice upon a party. motion to

vacate the default is granted and the

Accordingly, the above-referenced motion is GRANTED, and it is,

2 of 3

FILED: QUEENS COUNTY CLERK 06/13/2023 09:23 AM

NYSCEF DOC. NO. 92

INDEX NO. 717500/2022

RECEIVED NYSCEF: 06/13/2023

action for ejectment and declaring that Plaintiff properly and validly terminated the subject lease and that Plaintiff is entitled to immediate possession of the Property, enjoining the Defendants from occupying or possessing the Property, directing the Sheriff of Queens County or a New York City Marshall to eject Defendants from the Property, issuing a warrant of eviction removing

ORDERED that the Order granting Plaintiff summary judgment on its second cause of

Defendants from possession of the Property and putting Plaintiff into immediate possession of the

Property is vacated.

The foregoing shall constitute the decision and order of this court.

Dated: June 8, 2023

6/13/2023 COUNTY CLERK QUEENS COUNTY Denise N. Johnson

DENISE N. JOHNSON J.S.C.