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S & H REALTY 1 LLC v. SADOK

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

FILED
6/13/2023
COUNTY CLERK
QUEENS COUNTY

Present: HONORABLE DENISE N. JOHNSON 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
Defendant(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
	<u>Numbered</u>
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

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 York Univ.*, 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,

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

FILED
6/13/2023 
COUNTY CLERK
QUEENS COUNTY

Denise N. Johnson

DENISE N. JOHNSON
J.S.C.