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Tzifil Realty Corp. v. Rona

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[*1]

Tzifil Realty Corp. v Rona
2023 NY Slip Op 50882(U) [80 Misc 3d 126(A)]
Decided on July 28, 2023
Appellate Term, Second Department
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This opinion is uncorrected and will not be published in the printed Official Reports.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 July 28, 2023

SUPREME COURT, APPELLATE TERM, SECOND DEPARTMENT, 2d, 11th and 13th
JUDICIAL DISTRICTS

PRESENT: : MARINA CORA MUNDY, J.P., LISA S. OTTLEY, LOURDES M.
VENTURA, JJ
2022-745 K C

Tzifil Realty Corp., Appellant,

against

Andrew Rona, Respondent, and John Doe, Undertenant.

Felipe E. Orner, for appellant. Andrew Rona, respondent pro se (no brief filed).

Appeal from an order of the Civil Court of the City of New York, Kings County (Hannah Cohen, J.), entered July 1, 2022. The order granted tenant's motion to, in effect, vacate a final judgment, entered May 11, 2022 upon tenant's failure to appear or answer the petition, and to be restored to possession in a nonpayment summary proceeding.

ORDERED that the order is affirmed, without costs.

Landlord commenced this nonpayment proceeding in February 2022, serving tenant by conspicuous place service, and tenant failed to appear or answer the petition. Landlord's motion for a default final judgment was granted after an inquest (Hannah Cohen, J.); a default final judgment awarding landlord possession was entered on May 11, 2022; and tenant was evicted on June 13, 2022. By order to show cause signed on June 16, 2022, tenant moved to, in effect, vacate the default final judgment (*see* CPLR 5015) and to be restored to

possession. Tenant alleged in support of his motion that he had been out of town; that, even though he had arranged to have his mail forwarded, the United States Postal Service did not forward any mail from landlord; and that he filed an application with the COVID-19 Emergency Rental Assistance Program of 2021 (ERAP) (L 2021, ch 56, § 1, part BB, § 1, subpart A, sec 1, § 3 [3], as amended by L 2021, ch 417, § 2, part A, § 1; [see Avalonbay Communities, Inc. v Dukes, 78 Misc 3d 134](#)[A], 2023 NY Slip Op 50453[U] [App Term, 2d Dept, 9th & 10th Jud Dists 2023]). We [*2]note that it is undisputed that landlord was informed of tenant's pending ERAP application prior to the execution of the warrant of eviction. After a virtual hearing on tenant's motion, the Civil Court (Hannah Cohen, J.), by order entered July 1, 2022, granted the motion on the ground that it was improper for the court to proceed with an inquest and enter a default final judgment at that time. Tenant has since been restored.

As tenant demonstrated both a reasonable excuse for the default and a potentially meritorious defense to the entry of the default judgment (*see* CPLR 5015 [a] [1]; [Nationstar Mtge., LLC v McLean, 140 AD3d 1131](#) [2016]; [136-76 39th Ave., LLC v Ai Ping Wu, 55 Misc 3d 128](#)[A], 2017 NY Slip Op 50363[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2017]), we find no basis to disturb the Civil Court's order granting tenant's motion.

Accordingly, the order is affirmed, albeit on a different ground.

MUNDY, J.P., OTTLEY and VENTURA, JJ., concur.

ENTER:

Paul Kenny

Chief Clerk

Decision Date: July 28, 2023

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