

Winters-Nelson v Super Laundry Ctr., Inc.

2020 NY Slip Op 35648(U)

June 25, 2020

Supreme Court, Bronx County

Docket Number: Index No.: 23323/2015E

Judge: Rubén Franco

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 26

-----X
WINTERS-NELSON, PATRICIA

Index No. 23323/2015E

-against-

Hon. RUBÉN FRANCO,

SUPER LAUNDRY CENTER, INC. et al

Justice Supreme Court

-----X

The following papers numbered 1 to ___ read on this motion, (Seq. No. 003) for VACATE ORDER/JUDGMENT noticed on April 20, 2020.

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s).
Answering Affidavit and Exhibits	No(s).
Replying Affidavit and Exhibits	No(s).

MOTION IS DECIDED IN ACCORDANCE WITH MEMORANDUM DECISION

FILED HEREWITH

Respectfully Referred to: _____
Dated: _____

Dated: June 25, 2020

Hon. _____


RUBÉN FRANCO, J.S.C.

Rubén Franco

- X
1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
2. MOTION IS..... GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
 FIDUCIARY APPOINTMENT REFEREE APPOINTMENT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 26

-----x
WINTERS-NELSON, PATRICIA

Index No. 23323/2015E

Plaintiff,

-against-

Hon. RUBÉN FRANCO,

Justice Supreme Court

SUPER LAUNDRY CENTER, INC. d/b/a LAVAMAX SUPER
LAUNDRY CENTER,
THE JANE H. GOLDMAN RESIDUARY TRUST NUMBER 1,
THE ALLAN H. GOLDMAN RESIDUARY TRUST NUMBER 1,
THE AMY P. GOLDMAN RESIDUARY TRUST NUMBER 1,
THE DIANE GOLDMAN KEMPER RESIDUARY TRUST
NUMBER 1,
THE JANE H. GOLDMAN RESIDUARY TRUST NUMBER 3,
THE ALLAN H. GOLDMAN RESIDUARY NUMBER 3,
THE AMY P. GOLDMAN RESIDUARY TRUST NUMBER 3,
THE DIANE GOLDMAN KEMPER RESIDUARY TRUST
NUMBER 3,
THE JANE H. GOLDMAN Y-1 TRUST,
THE ALLAN H. GOLDMAN Y-1 TRUST,
THE AMY P. GOLDMAN Y-1 TRUST,
THE DIANE GOLDMAN KEMPER Y-1 TRUST,
THE JANE H. GOLDMAN Y-3 TRUST,
THE ALLAN H. GOLDMAN Y-3 TRUST,
THE AMY P. GOLDMAN Y-3 TRUST
and THE DIANE GOLDMAN KEMPER Y-3 TRUST,
Defendants.

-----x
THE LILLIAN GOLDMAN MARITAL TRUST,
THE ESTATE OF LILLIAN GOLDMAN
and SOL GOLDMAN INVESTMENTS LLC s/h/a
THE JANE H. GOLDMAN RESIDUARY TRUST NUMBER 1,
THE ALLAN H. GOLDMAN RESIDUARY TRUST NUMBER 1,
THE AMY P. GOLDMAN RESIDUARY TRUST NUMBER 1,
THE DIANE GOLDMAN KEMPER RESIDUARY TRUST
NUMBER 1,
THE JANE H. GOLDMAN RESIDUARY TRUST NUMBER 3,
THE ALLAN H. GOLDMAN RESIDUARY NUMBER 3,
THE AMY P. GOLDMAN RESIDUARY TRUST NUMBER 3,
THE DIANE GOLDMAN KEMPER RESIDUARY TRUST
NUMBER 3,
THE JANE H. GOLDMAN Y-1 TRUST,
THE ALLAN H. GOLDMAN Y-1 TRUST,
THE AMY P. GOLDMAN Y-1 TRUST,
THE DIANE GOLDMAN KEMPER Y-1 TRUST,
THE JANE H. GOLDMAN Y-3 TRUST,
THE ALLAN H. GOLDMAN Y-3 TRUST,
THE AMY P. GOLDMAN Y-3 TRUST and

Third-Party Index No. 43405/2019E

THE DIANE GOLDMAN KEMPER Y-3 TRUST,
Third-Party Plaintiffs,

-against

SYD-SKY CORP. and T S R LAUNDRY CORP.,
Third-Party Defendants

-----x

Ruben Franco, J.

In this action for, *inter alia*, personal injuries, defendants/third-party plaintiffs (movants) move to vacate this court’s Order denying summary judgment motion due to their failure to appear at a conference scheduled for March 9, 2020. Third-party defendant, TSR Laundry Corp. (TSR), cross moves to join movants’ motion.

On January 12, 2015, plaintiff allegedly slipped and fell on ice on the ramp at the main entrance/exit of the laundry facility at 3559 White Plans Road, in Bronx County (premises). Movants were landlords/lessors and third-party defendants were lessees who were in possession of the premises. Prior to the date of the accident, third-party defendant SYD-SKY, sublet a portion of the premises to TSR, and on the date of the accident TSR allegedly operated the laundromat at the premises.

To prevail on a motion to vacate, the movant must demonstrate both a reasonable excuse for the default and a meritorious defense to the underlying action (CPLR 5015; *see 60 E. 9th St. Owners Corp. v Zihenni*, 111 AD3d 511, 512 [1st Dept 2013]). In *Genesis v City of New York*, 162 AD3d 471 [1st Dept. 2018], the Court affirmed vacatur of the default based on law office failure where the defaulting party demonstrated that it was unaware that the motion was scheduled for oral argument, perhaps because it was referred from one Justice to another. The Court also recognized that public policy favors resolution of disputes on the merits (*Harwood v Chaliha*, 291 AD2d 234 [1st Dept 2002]).

Here, the attorney for movants who was handling the matter, was on vacation until March

2, 2020. The attorney received plaintiff's opposition to the motion upon his return to the office, and sought an adjournment of the motion, which was returnable on March 9, 2020, to review plaintiff's opposition and prepare a reply. To seek an adjournment, the attorney obtained the signatures of all the parties' attorneys and filed the stipulation on March 6, 2020. The attorney failed to realize that, since the motion was no longer with the Central Clerk's office, but was instead before this court, an appearance was required. Thus, movants assert that failure to appear was due to a calendar error, and law office failure, because they mistakenly believed that the motion was in Clerk's office and that no appearance was required.

In the initial summary judgment motion, movants submitted an attorney's affirmation, and the affidavit of Kathleen Weeks, a Risk Claims Manager, who averred that she is familiar with the sub-lease agreement between movants and SYD-SKY, and states that pursuant to the agreement movants had no responsibility for the daily management or operations of the premises, and that at the time of the accident, SYD-SKY was responsible for all snow and ice removal. The court finds that movant has set forth meritorious arguments alleging indemnification against SYD-SKY.

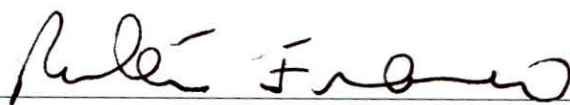
The court finds that movants have demonstrated a reasonable excuse for the default, and a meritorious defense to the underlying action

Accordingly, movants' motion and TSR's cross motion are granted to the extent that this court's Order dated March 9, 2020, is vacated and the motion and cross motion are restored to the motion calendar.

Movants shall serve all parties with a copy of this Order with Notice of Entry within 30 days from the date of its entry.

This constitutes the Decision and Order of the court.

Dated: June 25, 2020



Ruben Franco, J.S.C.

HON. RUBÉN FRANCO