

**Grullon v 21 APD Assoc.**

2024 NY Slip Op 34374(U)

December 11, 2024

Supreme Court, Kings County

Docket Number: Index No. 522490/2022

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS, PART 73

Index No.: 522490/2022  
Motion Date: 12-9-24  
Mot. Seq. No.: 2, 3

-----X  
GEORGE GRULLON,

Plaintiff,

-against-

**DECISION/ORDER**

21 APD ASSOCIATES, CENTURY 21 APD  
ASSOCIATES REALTORS, INC. AND LOGAN  
NICOLE VANCE,

Defendant.  
-----X

The following papers, which are e-filed with NYCEF as items 14-30, were read on these motions:

In motion sequence number 2, the defendants, CENTURY 21 APD ASSOCIATES and CENTURY 21 APD ASSOCIATES REALTORS, INC. move by pre-answer motion for an order dismissing the action pursuant to Business Corporation Law §307. In motion sequence number 3, the same defendants move to vacate a default judgment that was entered in plaintiff's favor due to their failure to timely appear in the action. The two motions are consolidated for disposition.

Background:

The plaintiff is a resident of the state of New York and owns real property located at 3816 Tierra Alamo Drive, El Paso, Texas 79938. In his verified complaint, the plaintiff alleges that he entered into a contract with the defendants, Century 21 APD Associates and Century 21 APD Associates Realtors, Inc., pursuant to which they undertook to manage the property. He alleges that the moving defendants thereafter leased the property to defendant Logan Nicole Vance on his behalf, who is also a resident of Texas. Plaintiff claims that while Ms. Vance was in possession of the property, she caused significant damages to the property. Plaintiff commenced this action claiming that the moving defendants' negligence and failure to fulfill their obligations under their contract were a substantial factor in causing these damages. Ms. Vance has not appeared in the action and apparently has yet to be served with the summons and complaint.

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On April 24, 2024, the plaintiff moved for a default judgment against both Century 21 APD Associates and Century 21 APD Associates Realtors, Inc. due to their failure to timely appear in the action. Both defendants were served with the summons and complaint pursuant to BCL § 307(a), which allows for service upon a foreign corporation through the Secretary of State when the foreign corporation is subject to the court's long-arm jurisdiction under CPLR 302(a)(1) (*Wright v. 299 Union Ave. Corp.*, 288 A.D.2d 382, 382–83, 733 N.Y.S.2d 223, 224).

On April 28, 2024, Century 21 APD Associates and Century 21 APD Associates Realtors, Inc. moved by pre-answer motion to dismiss the action on the ground that service was improper under BCL § 307(a) because they are not subject to the court's long-arm jurisdiction under CPLR 302(a)(1). They also seek dismissal on the ground that the Court lacks jurisdiction over them.

By order dated July 21, 2024, plaintiff's motion for a default judgment was granted, on default, and defendants' motion to dismiss was adjourned to October 7, 2024.

On September 18, 2024, the moving defendants made the motion to vacate the default judgment maintaining, inter alia, that because the Court lacks personal jurisdiction over them, the default judgment cannot stand. Defendants' motion to dismiss and their motion to vacate the default judgment were marked submitted December 9, 2024.

In support of their motion to dismiss, the moving defendants submitted the affidavit of Matthew Hoard, a Vice President of Century 21 APD Associates, which is located at 9201 Montana Avenue, El Paso, Texas 79925. Mr. Hoard averred that Century 21 APD Associates does not conduct any business in New York, that Century 21 APD Associates does not solicit business in New York, that Century 21 APD Associates does not own any buildings, offices, or homes in New York, that Century 21 APD Associates does not have any employees in New York, and that Century 21 APD Associates does not have any listings in New York. He did not state whether Century 21 APD Associates is a corporation, partnership or other type of business entity and

only provided information concerning Century 21 APD Associates. Nowhere in his affidavit did he discuss whether defendant Century 21 APD Associates Realtors, Inc. has any contacts with the State of New York.

Based on the record before the Court, the court is unable to determine whether service upon Century 21 APD Associates was proper. As stated above, Century 21 APD Associates was served pursuant to BCL § 307(a). Only a foreign corporation may be served pursuant to BCL § 307(a) and nothing before the court indicates, one way or the other, whether Century 21 APD Associates a foreign corporation. If Century 21 APD Associates is not a corporation, the action insofar as asserted against them must be dismissed due to improper service if process. If it is a foreign corporation, the Court will have to determine whether this Court has long arm jurisdiction over it pursuant to CPLR 302(a)(1).

With respect to Century 21 APD Associates Realtors, Inc., there is no admissible proof before the Court as to whether this defendant's contracts with New York are sufficient to confer long arm jurisdiction over it pursuant to CPLR 302(a)(1).

In order to permit the court to address the issues presented by the two motions, the moving defendants are directed to supplement their moving papers, within 30 days of this order, and include the following: (1) admissible proof as to whether century 21 APD Associates is a corporation, and (2) admissible proof as to whether Century 21 LAPD Associates Realtors, Inc. is a foreign corporation and admissible proof setting forth what contacts, in any, Century 21 LAPD Associates Realtors, Inc. has with the state of New York.

The two motions are adjourned to January 27, 2025. The plaintiff is granted leave to submit supplemental opposition papers within 10 days of service of defendants' supplemental papers. The moving defendants may reply to these papers by the adjourned date of the motions.

Accordingly, it is hereby

**ORDRED** that two motions are adjourned to January 27, 2025.

This constitutes the decision and order of the Court.

Dated: December 11, 2024

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**PPS**

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**PETER P. SWEENEY, J.S.C.**

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020