

**CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART A**

YUN ZHONG SUN

Petitioner

-against-

**BRITTANY CAPIES
CHRISTINA M. EDWARDS**

Respondent(s)

Index No. 73891/15

DECISION/ORDER

**Present:
Hon. José Rodriguez
Judge, Housing Part**

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion to restore to possession.

Papers

Numbered

Order to Show cause and Affidavits Annexed

1

Attorney's Affirmation In Opposition

2

Upon the foregoing cited papers, the Decision/Order of this Motion is as follows:

Petitioner began this holdover proceeding in September 2015 seeking possession of a condominium unit located at 140-55 34th Avenue, Apartment 2J, Flushing, New York. The proceeding was commenced pursuant to RPAPL §713(5).

On August 11, 2015 petitioner served respondents a ten day Notice to Terminate. On September 12, 2015 petitioner served a Petition and Notice of Petition. Respondents failed to appear and on October 29, 2015 petitioner was awarded a judgment of possession after inquest. On December 22, 2015 respondent's Order to Show Cause was granted to the extent of staying the execution of the warrant of eviction until February 20, 2016 for respondents to vacate. On February 25, 2016 respondent's Order to Show Cause was granted and execution was further stayed to March 31, 2016. Respondents were subsequently evicted. Respondent filed an Order

to Show Cause seeking to be restored to possession and on April 1, 2016 respondent agreed by stipulation to remove her possessions from the subject apartment by April 5, 2016.

Respondents retained counsel and moves this court for an order vacating and/or modifying the decisions and orders dated October 29, December 22, 2015 and February 25, 2016. Respondent argues that petitioner failed to serve respondents with a 90 day notice after the foreclosure as required by RPAPL §1305. The petition alleges that respondents are tenants of the subject premises pursuant to an oral agreement. Petitioner obtained ownership of the subject premises after foreclosure by way of a referee's deed dated July 29, 2015.

RPAPL §1305 provides

1(c) "Tenant" shall mean any person who at the time the notice required by subdivision four of section thirteen hundred three of this article appears as a lessee on a lease of one or more dwelling units of a residential real property that is subordinate to the mortgage on such residential real property; or who at such time is a party to an oral or implied rental agreement with the mortgagor and obligated to pay rent to the mortgagor or such mortgagor's representative, for the use or occupancy of one or more dwelling units of a residential real property....

2) Notwithstanding any other provision of law, a tenant of a unit not subject to rent control or stabilization shall have the right to remain in occupancy of the unit of the subject residential real property where he or she resides on the date of mailing of the notice required by subdivision three of this section for the greater of: (a) a period of ninety days from the date of mailing such notice; or (b) for the remainder of the lease term;....

(3) Notwithstanding any other provision of law, and consistent with subdivision two of this section, a successor in interest of residential real property shall provide written notice to all tenants: (a) that they are entitled to remain in occupancy of such property for the remainder of the lease term, or a period of ninety days from the date of mailing of such notice, whichever is greater on the same terms and conditions as were in effect at the time of entry of the judgment of foreclosure and sale, or if no such judgment was entered, upon the terms and conditions as were in effect at the time of transfer of ownership of such property; and (b) of the name and address of the new owner. Any person or entity who or which becomes a successor in interest after the issuance of the ninety-day notice provided for in

this subdivision, shall notify all tenants of its name and address and shall assume such interest subject to the right of the tenant to maintain possession as provided in this subdivision.

The federal Protecting Tenants at Foreclosure Act (PTFA) requires that 90 days' notice to quit be given for residential properties upon which a federally related loan was foreclosed. RPAPL § 1305 was enacted in 2009 and provides additional protection for tenants, over and above the federal statute.

In the instant case it is undisputed that petitioner failed to provide a written 90 day notice required by RPAPL §1305. Petitioner argues that by failing to appear and file an answer to the petition it is too late for respondent to assert a defense of not having received a 90 day notice.

Courts generally favor dispositions made on the merits rather than on a default of a party. *Goldstein Affiliates, Inc. v. Len Art Knitting Corp.*, 75 A.D.2d 551, 427 N.Y.S.2d 233 (1st Dept., 1980). To vacate a default judgment the defaulting party must set forth a prima facie showing of a reasonable excuse for the default and underlying meritorious defense. See, *New York City Housing Authority v. Torres*, 61 A.D.2d 681, 403 N.Y.S.2d 527 (1st Dept., 1978); *Tai Sang Kwong v. Budge Wood Laundry Service, Inc.*, 97 A.D.2d 691, 468 N.Y.S.2d 110 (1st Dept., 1983). Where the defaulting party fails to provide an excusable default and meritorious defense the motion seeking to vacate the default judgment should be denied. See, *Metropolitan Ins. and Annuity Co. v. Eromosele*, 10 Misc.3d 141(A), 814 N.Y.S.2d 891 (App. Term 1st Dept., 2006); *348 West 115th LLC v. Robinson*, 2003 WL 1701517 (.App.Term, 1st Dept. 2003).

Respondent has appeared pro se throughout this proceeding and moves for an order vacating the judgment entered on default. Courts have the inherent power to relieve parties from the effects of their judgments. "Courts always have control over their own proceedings, and where no express prohibition is, may deal with them so that what is right and just may be

reached". *In re City of Buffalo*, 78 N.Y.362, 1879 WL 10802 (1879). The court has jurisdiction to entertain a motion to vacate a judgment at any time, *300 West Realty Co. v. Wood*, 69 Misc. 2d 580 (Civ. Ct. 1971); order aff'd. 69 Misc. 2d 582 (App. Term 1972) and in the interest of justice. *Wynchwood Gardens Co. v. Carlson*, NYLJ 6/2/78, p. 14, c. 6 (App. Term 9th & 10th Jud. Dists.); *Mandina v. JNC Sales Corp.*, NYLJ 12/19/79, p.14, c.6 (App. Term 1st Dept.). See also, CPLR §5015. Even after execution of the warrant, the court retains jurisdiction for certain purposes, *Matter of Albany v. White*, 46 Misc 2d 915; *Matter of Joseph v. Cheeseboro*, 42 Misc 2d 917, rev'd. on other grounds 43 Misc 2d 702).

In the instant proceeding respondents meet the definition of tenants as defined by RPAPL §1305. It is clear and undisputed that petitioner failed to comply with the notice requirements contained in RPAPL §1305. Accordingly, respondents' motion is granted. Respondent shall be restored to possession forthwith, the judgment and warrant are vacated and the petition is dismissed.

The foregoing constitutes the Decision and Order of the Court.

Dated: Queens, New York
April 15, 2016


HON. JOSE RODRIGUEZ
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JUDGE, HOUSING COURT
Judge, Housing Part