

Rockwood Owners Corp. v. Rainess

Supreme Court of New York, New York County

December 18, 2025, Decided; December 19, 2025, Filed

INDEX NO. 152052/2021

Reporter

2025 N.Y. Misc. LEXIS 10311 *; 2025 NY Slip Op 34923(U) **; 2025 LX 615123

[1]** ROCKWOOD OWNERS CORP, Plaintiff, - v -
ERROL RAINESS, JOHN DOE, JANE DOE, Defendant.

Notice: THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

Judges: **[*1]** HON. ALEXANDER M. TISCH, Justice.

Opinion by: ALEXANDER M. TISCH

Opinion

DECISION + ORDER ON MOTION

According to the Amended Complaint (NYSCEF Doc. No. 96) this is an action for unpaid maintenance arrears, use and occupancy, and to recover possession of apartment 12C located at 20 East 68th St. (the Apartment) from defendant Errol Rainess, the proprietary lessee of the Apartment. Plaintiff alleges defendant failed to make several years' worth of maintenance and special assessment payments and engaged in other ***objectionable conduct*** in violation of the proprietary lease, including propping his door open in violation of local law (*NYC Administrative Code 28-315.10*), leaving personal items and food in the hallway outside the Apartment, loitering in the lobby, including while eating and attending to personal hygiene matters, and appearing nude in the hallway outside his apartment and inside his apartment, with the door open, visible to other tenants. Plaintiff claims the defendant's tenancy was terminated and defendant is currently a holdover tenant.

[2]** Plaintiff brought this action in March of 2021. Defendant failed to timely answer or otherwise move against the complaint and a default judgment on the first cause of action (for maintenance due and **[*2]** owing) was entered against defendant in December 2021. A

default judgment on the third cause of action (for attorneys' fees) was granted on October 12, 2022 (NYSCEF Doc. No. 20, Motion Seq. No. 002).

Defendant moved to vacate the default in Motion Sequence Number 003, which motion was granted as far as it sought to vacate both the default (Motion Sequence No. 001) and the decision and order granting attorneys' fees (Motion Sequence No. 002). Defendant was granted leave to file an answer within 20 days of service of the decision and order. Notice of Entry of the decision and order was filed on December 5, 2023. Defendant filed an answer with counter-claims on December 10, 2023 (NYSCEF Doc. No. 88). Plaintiff filed an amended complaint on December 29, 2023 (NYSCEF Doc. No. 96). On January 18, 2024, defendant filed an Answer, Counterclaim and Third-Party Cross Claims (NYSCEF Doc. No 111), which had been filed improperly and was returned for correction on February 8, 2024, after plaintiff had filed their Reply to the Counterclaims (NYSCEF Doc. No. 112). Defendants' counsel subsequently withdrew as counsel based on the non-payment of their legal fees (Motion Sequence No. 005, NYSCEF Doc. **[*3]** No. 115, 124).

Now, plaintiff moves for default judgment on all claims in the amended complaint pursuant to [CPLR § 3215](#), seeking relief including a money judgment and an order of ejectment, based on defendant's delay tactics and failure to litigate the matter. Defendant, now with new counsel, albeit after the deadline for his response, opposes the motion and cross-moves to file an amended answer with counterclaims and a third-party complaint, pursuant to [CPLR §3025\(b\)](#), [CPLR §3019](#) and [CPLR §2001](#). Defendant seeks to amend his answer to add allegations in **[**3]** opposition to plaintiff's claims and to assert counterclaims against plaintiff sounding in negligence, breach of the warranty of habitability, breach of the covenant of quiet enjoyment, constructive eviction, unjust enrichment, violation of [Title III of the Americans with Disabilities Act](#) and [Rehabilitation Act of 1973 Section 504](#), assault, and defamation. Defendant also seeks to assert cross-claims against Sule Haskell, Eli Skornicki, Alejandro

Rebelo, Alejandro Vera, and Jose Ventura sounding in assault and defamation, alleging Haskell, Skornicki, and Ventura assaulted defendant in the lobby by invading his personal space, threatening to kick him out, and calling him names. Defendant further [*4] alleges Haskell, Vera, and Rebelo defamed him by making false statements that defendant was unclothed in a hallway outside the Apartment.

[CPLR § 3215\(a\)](#) provides that "[w]hen a defendant has failed to appear, plead or proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed, the plaintiff may seek a default judgment." While defendant has engaged in significant delay tactics, he is now represented by counsel and seeks to participate in the litigation. The Appellate Division, First Department has repeatedly held:

"[t]hat it is the general policy of the courts to permit actions to be determined by a trial on the merits wherever possible and for that purpose a liberal policy is adopted with respect to opening default judgments in furtherance of justice to the end that the parties may have their day in court to litigate the issues"

([38 Holding Corp. v New York](#), 179 AD2d 486, 578 N.Y.S.2d 174 [1st Dept 1992]; see also [Gluck v McDonough](#), 139 AD3d 628, 629, 33 N.Y.S.3d 36 [1st Dept 2016] ["strong public policy favors resolving cases on the merits"] and [Acosta v Riverdale Dev., LLC](#), 72 AD3d 525, 898 N.Y.S.2d 451 [1st Dept 2010] ["vacatur here was consistent with the strong public policy favoring resolution of cases on their merits"]). Accordingly, the motion for default judgment will be denied, despite defendant's dilatory behavior.

[**4] As to defendant's [*5] cross-motion for leave to amend his answer, leave to amend a pleading pursuant to [CPLR § 3025](#) "shall be freely given," in the absence of prejudice or surprise (see e.g. [Thompson v Cooper](#), 24 AD3d 203, 205, 806 N.Y.S.2d 32 [1st Dept 2005]; [Zaid Theatre Corp. v Sona Realty Co.](#), 18 AD3d 352, 354, 797 N.Y.S.2d 434 [1st Dept 2005]). Mere lateness in seeking such relief is not in itself a barrier to obtaining judicial leave to amend (see [Ciarelli v Lynch](#), 46 AD3d 1039, 847 N.Y.S.2d 694 [3d Dept 2007]). Rather, when unexcused lateness is coupled with significant prejudice to the other side, denial of the motion for leave to amend is justified (see [Edenwald Contracting Co. v City of New York](#), 60 NY2d 957, 958, 459 N.E.2d 164, 471 N.Y.S.2d 55 [1983]). Prejudice in this context is shown where the nonmoving party is "hindered in the

preparation of his case or has been prevented from taking some measure in support of his position" ([Loomis v Civetta Corinno Constr. Corp.](#), 54 N.Y.2d 18, 23, 429 N.E.2d 90, 444 N.Y.S.2d 571 [1981]). Plaintiff has alleged no prejudice.

Accordingly, for the reasons discussed above, it is hereby

ORDERED that the motion for default judgment (Motion Seq. No. 006) is hereby DENIED and the cross-motion to amend the answer and file an Amended Answer, Counterclaims and Third-Party Complaint (Motion Seq. No. 006) is hereby GRANTED. Within 10 days of the filing of this Decision and Order, defendant shall file the Proposed Verified Amended Answer, Counterclaims and Cross Claims (NYSCEF Doc. No. 163) on the docket as the operative Verified Amended Answer, Counterclaims and Cross Claims; and it is [*6] further

ORDERED that the amended answer, in the form annexed to the motion papers, shall be deemed served upon service of a copy of this order with notice of entry upon all parties who have appeared in the action; and it is further

ORDERED that a supplemental summons and amended complaint, in the form annexed to the motion papers, shall be served, in accordance with the Civil Practice Law and Rules, upon the [*5] additional parties in this action within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel shall appear for a conference in this case on February 17, 2026, at 10:00 A.M.

12/18/2025

DATE

/s/ Alexander M. Tisch

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