

STATE OF VERMONT

SUPERIOR COURT
Windsor Unit

CIVIL DIVISION
Docket No. 698-11-13 Wrcv

CHRISTOS PANAGIOTIDIS and
HRISANTHI PANAGIOTIDIS,

Plaintiffs,

v.

ALEXANDROS GALANIS,

Defendant.

DECISION RE: DEFENDANT'S MOTION TO VACATE DEFAULT JUDGMENT
AND STAY WRIT OF POSSESSION

This matter is before the court on Alexandros E. Galanis's ("Defendant's")
Motion to Vacate Default Judgment and Stay Writ of Possession, filed January 2, 2014.

BACKGROUND

On March 1, 2013, Christos and Hrisanthi Panagiotidis ("Plaintiffs") leased commercial real estate located at 824 Hartford Avenue, Hartford, Vermont (the "Property") to Defendant. The lease provided for a five-year tenancy with rent due in monthly installments. Defendant has failed to pay rent to Plaintiffs since October 2013.

On November 25, 2013, Plaintiffs filed this action, seeking to eject Defendant from the Property and to recover damages from Defendant. As Defendant had not answered or otherwise responded to the Complaint by December 10, 2013, Plaintiffs moved for default judgment and a writ of possession for the Property. The court granted Plaintiffs' requests on December 18, 2013.

On January 2, 2014, Defendant moved to vacate the default judgment and stay the writ of possession, arguing that Defendant's counsel never received a copy of the complaint, despite Defendant allegedly having mailed one. Plaintiffs objected to this motion and request for a stay on January 7, 2014.

Also on January 7, 2014, Defendant filed an Ex Parte Motion for Immediate Stay, arguing that the writ of possession, scheduled to be executed at 11:00 AM on January 8, 2014, should be stayed and that a hearing should be scheduled as soon as possible. Plaintiffs objected to this motion on January 8, 2014.

On January 8, 2014, the court granted Defendant's Ex Parte Motion for Immediate Stay. However, before the court's order, a sheriff had executed the writ of

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possession, and Defendant had vacated the Property. The court later clarified that Defendant should be restored to the Property at least until a hearing on Defendant's outstanding motions on January 14, 2014.

At that hearing, Plaintiffs reasserted that vacating the default would be inappropriate, while Defendant argued that he had failed to respond to the complaint only because of a mistake and that, therefore, the court should vacate the default and consider the merits of the dispute.

DISCUSSION

As an initial matter, Defendant's Motion to Vacate Default Judgment is granted. The law favors adjudication of disputes on the merits. *Ying Ji v. Heidi*, 2013 WL 4870709, ¶ 14, (Vt. Sept. 13, 2013). Therefore, a court "should generally reopen [a matter closed by a default judgment] absent culpable negligence or deliberate purpose to delay." *Courtyard Partners v. Tanner*, 157 Vt. 638, 638 (1991) (internal quotations omitted). V.R.C.P. 55(c) empowers a court to vacate a default judgment if doing so would be appropriate under V.R.C.P. 60(b). V.R.C.P. 55(c).

Here, vacating the default judgment is particularly appropriate because Plaintiffs were aware that Defendant would likely challenge Plaintiffs' allegations based on his Answer and Counterclaim filed in *Hartford Pizza, Inc. v. Galanis*, Docket No. 699-11-13 Wrcv (the "Hartford Pizza Action"). The Hartford Pizza Action, initiated the day after this one, alleges that Defendant breached his contract with Hartford Pizza, Inc., Plaintiffs' business, by failing to make the required payments on a promissory note secured by the Property. On December 12, 2013, Defendant answered in the Hartford Pizza Action and filed various counterclaims, alleging that Plaintiffs and Hartford Pizza, Inc. materially misrepresented relevant facts to induce Defendant to agree to the promissory note.

Based on his Answer in the Hartford Pizza Action, Plaintiffs, who control Hartford Pizza, Inc., should have been aware that Defendant would contest this action. This awareness, coupled with the court's policy favoring the vacation of default judgments and the fact that Defendant allegedly failed to answer only because of a mistake mailing the complaint to his counsel, makes vacating the default judgment appropriate. See *Vahlteich v. Knott*, 139 Vt. 588, 590 (1981) (noting that courts "should be indulgent in opening decrees entered by default.").

As the default judgment has been vacated, the writ of possession, which issued as a consequence of that judgment, should be set aside. The court granted the motion for writ of possession because of the default judgment. Now that the default judgment has been vacated, the writ of possession is unenforceable. See *Meehan v. Bessette*, 189 A. 861, 861 (Vt. 1937) (indicating that when the order upon which a writ of possession is based gets reversed, the writ of possession itself should also be set aside). Accordingly, Defendant's request for a stay of the writ of possession is moot because the writ of possession is no longer valid.

Finally, the court must address what should be done regarding the rent owed by

Defendant to Plaintiffs. At the January 14, 2014 hearing, Defendant's counsel explained that Defendant had been paying the rent due to Plaintiffs into an escrow account because one of Plaintiffs' creditors has notified Defendant that the creditor had been granted an assignment of rent with respect to any rental payments due to Plaintiffs.¹ Plaintiffs maintain that Defendant owes rent to Plaintiffs, not their creditor.²

Before the default judgment in this case, Plaintiffs had filed a Motion for Payment of Rent into Court and Expedited Hearing, requesting an order for Defendant "to pay the balance due in rent into this Court, and to continue to pay prospective rent as it accrues during the course of this action." Pls.' Mot. for Payment of Rent into Court and expedited Hearing, p. 1. They later withdrew this motion because the default judgment rendered it moot.

Now, however, such a motion could be appropriate considering the vacation of the default judgment. 12 V.S.A. § 4853a is designed to give parties a neutral location to pay disputed rents while an action is ongoing. Here, Plaintiffs argue that Defendant owes them rental payments dating back to October 2013. Defendant asserts that he is on notice of a creditor that claims that it has a right to all rents due to Plaintiffs.

The court invites Plaintiffs to renew their Motion for Payment of Rent into Court and Expedited Hearing so that the parties can more fully brief the question of where Defendant should make its rental payments. The January 14, 2014 hearing primarily addressed the appropriateness of vacating the default judgment. The issue of Defendant's payment of rents was not central to that hearing. What Defendant should do with his rental payments is of particular importance to all parties, and the court would prefer to address that question after Plaintiffs and Defendant have had an opportunity to answer it more thoroughly.

Should Plaintiffs decide not to renew their Motion for Payment of Rent into Court and Expedited Hearing, the court will make an appropriate order regarding Defendant's rental payments at that time.

ORDER

Defendant's Motion to Vacate Default Judgment is hereby GRANTED.


Because the default judgment has been vacated, the Writ of Possession issued as a result of the default judgment is no longer enforceable. Defendant's request for a stay of the writ of possession is therefore moot.

¹ Defendant's counsel asserts that the amount Defendant has paid into the escrow account is sufficient to cover the rent he currently owes to Plaintiffs.

² Because Defendant has indicated that a competing claim could exist to the rental payments, absent an agreement regarding those payments, the inclusion of an additional party or parties may be necessary to resolve how the rental payments should be distributed.

Plaintiffs have ten days from the date of this order to renew their Motion for Payment of Rent into Court and Expedited Hearing.

Dated at White River Junction, Vermont, this 16 day of January, 2014.



Honorable Harold E. Eaton, Jr.
Superior Court Judge

FILED

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WINDSOR UNIT