

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

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Submitted - October 19, 2011

MARK C. DILLON, J.P.  
THOMAS A. DICKERSON  
JOHN M. LEVENTHAL  
LEONARD B. AUSTIN  
ROBERT J. MILLER, JJ.

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2010-09916

DECISION & ORDER

Teresa Pursoo, appellant, v Yasmin Ngala-El, also known as Yasmin Ngala, etc., et al., defendants, Buccarri Ngala, also known as Bukhari Ngala-El, et al., respondents.

(Index No. 2258/09)

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Raymond M. Smolenski, P.C., Bay Shore, N.Y., for appellant.

Law Office of Christopher L. Grayson, P.C., Garden City, N.Y., for respondent Patricia Ngala, also known as Patricia Felton Ngala.

In an action, inter alia, to recover damages for fraud and unjust enrichment, the plaintiff appeals from an order of the Supreme Court, Nassau County (Marber, J.), entered August 19, 2010, which denied her motion for leave to enter judgment against the defendants Buccarri Ngala, also known as Bukhari Ngala-El, and Patricia Ngala, also known as Patricia Felton Ngala, on the issue of liability, upon their defaults in appearing or answering, and granted the cross motion of the defendant Patricia Ngala, also known as Patricia Felton Ngala, in effect, to vacate her default in appearing and answering and to extend her time to answer.

ORDERED that the order is modified, on the law, by deleting the provision thereof denying that branch of the plaintiff's motion which was for leave to enter judgment against the defendant Buccarri Ngala, also known as Bukhari Ngala-El, on the issue of liability upon his default in appearing and answering, and substituting therefor a provision granting that branch of the motion; as so modified, the order is affirmed, with one bill of costs to the plaintiff, payable by the defendant Buccarri Ngala, also known as Bukhari Ngala-El, and one bill of costs to the defendant Patricia Ngala, also known as Patricia Felton Ngala, payable by the plaintiff.

November 1, 2011

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PURSOO v NGALA-EL, also known as NGALA

A defendant seeking to vacate a default under CPLR 5015(a)(1) must demonstrate both a reasonable excuse for the default in appearing or answering the complaint and a potentially meritorious defense to the action (*see Eugene Di Lorenzo, Inc. v A.C. Dutton Lbr. Co.*, 67 NY2d 138, 141; *Gray v B.R. Trucking Co.*, 59 NY2d 649, 650; *Kouzos v Dery*, 57 AD3d 949, 949). The evidence submitted by the defendant Patricia Ngala, also known as Patricia Felton Ngala (hereinafter Patricia), in opposition to the plaintiff's motion and in support of her cross motion, including her prior attorney's detailed explanation for his neglect, was sufficient to demonstrate a reasonable excuse for her default in answering the complaint (*see CPLR 2005; Stridiron v Jacob's Ladder Realty, L.L.C.*, 33 AD3d 320, 320-321; *Gironda v Katzen*, 19 AD3d 644, 645; *Uddaraju v City of New York*, 1 AD3d 140, 141). Furthermore, the record demonstrated that Patricia has a potentially meritorious defense to the action. Accordingly, the Supreme Court did not improvidently exercise its discretion in denying that branch of the plaintiff's motion which was for leave to enter a default judgment against Patricia and in granting Patricia's cross motion, in effect, to vacate her default and to extend her time to serve an answer.

In support of that branch of her motion which was for leave to enter a default judgment against the defendant Buccarri Ngala, also known as Bukhari Ngala-El (hereinafter Buccarri), the plaintiff submitted her process server's affidavit averring that Buccarri had been served with a copy of the summons and complaint, and also submitted a factually detailed verified complaint and an affirmation from her attorney regarding Buccarri's default in appearing and answering (*see CPLR 3215[f]; Woodson v Mendon Leasing Corp.*, 100 NY2d 62), and there was nothing in the record to indicate that Buccarri made a timely appearance or answered the complaint (*see Okeke v Ewool*, 66 AD3d 978, 979). Accordingly, that branch of the plaintiff's motion which was for leave to enter judgment against Buccarri, upon his default in appearing or answering, should have been granted (*see Church of S. India Malayalam Congregation of Greater N.Y. v Bryant Installations, Inc.*, 85 AD3d 706, 707; *Okeke v Ewool*, 66 AD3d at 979; *Levine v Forgotson's Cent. Auto & Elec., Inc.*, 41 AD3d 552, 553).

DILLON, J.P., DICKERSON, LEVENTHAL, AUSTIN and MILLER, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court