

NEW YORK SUPREME COURT - COUNTY OF BRONX
PART 32

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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**JANET TRANSIT, INC., VICTOR
WEINGARTEN, individually, VICTOR
WEINGARTEN AS TRUSTEE OF THE
TRUST CREATED UNDER SUBARTICLE
(B) OF ARTICLE FOURTH OF THE LAST
WILL AND TESTAMENT OF IRENE
WEINGARTEN DATED AUGUST 21, 1988,
VOSVETZEIN TRANSIT, INC., EDGAR
WEINGARTEN, individually, and PIPER
CAB CORP.,**

Index No. **811475/2021E**

Petitioners,

Hon. **FIDEL E. GOMEZ**
Justice

- against -

**MOTT HAVEN IMPROVEMENT GROUP
LP, and BNB Bank, a New York banking
corporation,**

Respondents.

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The following papers numbered 1 to 4, read on these motions, noticed on 10/14/2021 and 3/24/2022, and duly submitted as no. 1 and 2 on the Motion Calendar of 5/11/2022.

	<u>PAPERS NUMBERED</u>	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	1, 4	
Answering Affidavit and Exhibits	2	
Replying Affidavit and Exhibits	3	

Petitioners' motions are decided in accordance with the Decision and Order annexed hereto.

Dated: 6/15/22

Hon. 
FIDEL E. GOMEZ, A.J.S.C.

1. CHECK ONE..... CASE DISPOSED NON-FINAL DISPOSITION
2. MOTION IS..... GRANTED (mot. #1) DENIED (mot. #2) GRANTED IN PART
 OTHER
3. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER DO NOT POST
 FIDUCIARY APPOINTMENT REFEREE APPOINTMENT
 NEXT APPEARANCE DATE: _____

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DECISION AND ORDER

Index No. **811475/2021E**

Petitioners,

- against -

**MOTT HAVEN IMPROVEMENT GROUP
LP, and BNB Bank, a New York banking
corporation,**

Respondents.

-----X

Petitioners Janet Transit, Inc., Victor Weingarten, individually, Victor Weingarten as trustee of the trust created under subarticle (B) of article fourth of the last will and testament of Irene Weingarten dated August 21, 1988, Vosvetzein Transit, Inc., Edgar Weingarten, individually, and Piper Cab Corp. (“Petitioners”) move by order to show cause for an order (1) vacating two default judgments entered on July 27, 2021, in the Bronx County Supreme Court, under Index Nos. 810111/2021E and 810112/2021E (the “Judgments”); (2) prohibiting enforcement of the Judgments; and (3) granting a temporary restraining order pending the hearing of the order to show cause. Respondent Mott Haven Improvement Group LP (“Mott Haven”) opposes.

Petitioners also move for default judgment against Respondent BNB Bank, a New York banking corporation (“BNB Bank”) pursuant to CPLR § 3215. BNB Bank does not oppose.¹

¹ On May 12, 2022, after a virtual conference with the parties, this Court issued an Interim Order. In the Order, this Court memorialized the fact that during the conference, this Court denied BNB Bank’s application for leave to interpose opposition to Petitioners’ motion for default judgment. The Court indicated that at the April 18, 2022 conference with the parties, the Court indicated that absent any objection, it would allow the motion to proceed. The Court indicated that it had adjourned the motion, originally returnable on March 24, 2022, to May 2, 2022, and then again to May 12, 2022, and expected

For the reasons which follow, Petitioners' order to show cause is granted. In light of the foregoing, Petitioners' motion for default judgment against BNB Bank is denied as moot.

BACKGROUND:

On August 24, 2021, Petitioners commenced the instant action against Respondents Mott Haven and BNB Bank ("Respondents") by filing a verified petition and an order to show cause seeking a temporary restraining order. The petition is verified by counsel.

The petition alleges that Petitioners Janet Transit, Inc. ("Janet Transit"), Vosvetzein Transit, Inc. ("VT"), and Piper Cab Corp. ("Piper") are New York corporations that own and operate medallion taxi cabs in New York City. Petitioners allege that the medallion cabs for these three corporate entities are managed by Petitioner Victor Weingarten (Petition, ¶ 5).

The petition alleges that in July 2014, Janet Transit entered into a loan agreement with BNB Bank, f/k/a Bridgehampton National Bank, n/k/a Dime Community Bank, for the principal amount of \$1,584,000. In July 2014, VT also entered into a nearly identical but separate and independent loan agreement with BNB Bank for the principal amount of \$3,186,000. Among other assets, the medallions owned by Janet Transit, VT, and Piper were listed as collateral (Petition, ¶ 9).

The petition alleges that in December 2019, the parties amended the loan agreements to provide for principal amounts of \$1,501,890.66 and \$3,023,981.08, respectively, and an extended maturity date of November 2024. For these amendments, BNB Bank received a signed Judgment by Confession from Victor Weingarten on behalf of himself, Janet Transit and the Estate of Irene Weingarten, and a signed Judgment by Confession from Edgar Weingarten on behalf of himself, VT and Piper (Petition, ¶ 10).

The petition alleges that in April 2021, Victor Weingarten was notified that the loans held by BNB Bank, as well as some real estate property loans, had been sold and assigned to Mott Haven (Petition, ¶ 14).

that all opposition would be submitted prior to May 12, 2022. In light of the foregoing, as well as Petitioners' objection to BNB Bank's request, the Court marked the motion fully submitted, without opposition.

The Court notes that, upon a review of the Court records, the conference was held on May 11, 2022, not May 12, 2022. As such, any references to May 12, 2022 in the Interim Order should be read as if referring to May 11, 2022.

The petition alleges that on July 27, 2021, the Judgments were filed, with “BNB Bank, a New York banking corporation” as plaintiff, under Index No. 810111/2021E and Index No. 810112/2021E.

The petition seeks an order: (1) vacating the Judgments pursuant to CPLR 5015. Petitioners allege that they were not in default (Petition, ¶ 18). Petitioners also allege that the judgments were improperly entered, as they are facially defective, since they were captioned with BNB Bank as the plaintiff. Petitioners allege that at the time of the filing, Mott Haven had already purchased the loans from BNB Bank, and was the sole beneficiary of any future monies collected from the loans, and as such, Mott Haven was the only party that could appear as plaintiff in those actions. Petitioners allege that BNB Bank had no standing to sue Petitioners for payments relating to the loans. Petitioners also allege that Mott Haven had previously purchased separate index numbers to file the default actions under its own name as plaintiff, but abandoned those actions (Petition, ¶ 19). Petitioners further allege that the two actions should be dismissed as the subject loan purchases violate Judiciary Law § 489; (2) prohibiting enforcement of the Judgments because Mott Haven is not a licensed debt collection agency as required by NYC Administrative Code 20-488; and (3) granting a temporary restraining order providing for the above relief on an interim basis pending the hearing of the order to show cause (Petition, ¶ 2).

On August 27, 2021, the Court (Franco, J.) signed the order to show cause, granted the TRO,² and made the motion returnable on October 14, 2021.

On March 14, 2022, Petitioners moved for default judgment against BNB Bank pursuant to CPLR § 3215.

On May 11, 2022, the two motions were marked fully submitted.

DISCUSSION:

Petitioners’ Order to Show Cause:

Petitioners argue that the Judgments, entered in favor of BNB Bank on July 27, 2021, must be vacated, as BNB Bank did not have any interest in the underlying loans or in the underlying Affidavits for Judgment by Confession at the time the Judgments were entered. Petitioners argue that the loans and the Affidavits for Judgment by Confession had already been assigned to Mott

² On or around October 18, 2021, prior counsel for Petitioners submitted a letter to Judge Taylor advising her that when the parties appeared for a virtual hearing before Judge Franco on October 14, 2021, Judge Franco confirmed on the record that the August 27, 2021 order included a TRO against enforcement of the Judgments, and directed that the TRO be extended until the continuation of the hearing. (NYSCEF Doc. No. 81).

Haven on March 31, 2021. In support, Petitioners submitted, *inter alia*, the affidavit of Victor Weingarten; the Judgments; the Joint Affidavits for Judgment by Confession; and assignments of confession of judgment.

In his affidavit, Victor Weingarten asserts that on or around March 31, 2021, Dime Community Bank, successor by merger to BNB Bank (“Dime”), assigned the underlying loans to Mott Haven.

A copy of the judgment dated July 27, 2021, in the action entitled *BNB Bank, a New York banking corporation v Janet Transit Inc.; Victor Weingarten, individually, and Victor Weingarten as trustee of the Trust created under Subarticle (B) of Article Fourth of the Last Will and Testament of Irene Weingarten dated August 21, 1988*, under Index No. 810111/2021E, states that upon the filing of the Joint Affidavit for Judgment by Confession of Victor Weingarten, individually, as president of Janet Transit, and as Trustee of the Trust created under Subarticle (B) of Article Fourth of the Last Will and Testament of Irene Weingarten dated August 21, 1988, signed December 19, 2019, judgment is granted in favor of plaintiff in the sum of \$1,501,890.66, plus interest and costs, in the total amount of \$1,617,511.54 (Petitioners’ Exhibit 6a).

Attached to the judgment is a copy of the Joint Affidavit for Judgment by Confession dated December 19, 2019, effective October 28, 2019, which indicates that the affidavit was made for the purpose of entry of judgment in favor of plaintiff BNB Bank (as successor-in-interest to The Bridgehampton National Bank), its successors and assigns (Petitioners’ Exhibit 6a).

Also attached to the judgment is an assignment of confession of judgment dated May 17, 2021, effective March 31, 2021. The assignment provides that Dime grants, assigns, transfers and conveys to Mott Haven all of its right, title and beneficial interest in and to the Joint Affidavit for Judgment by Confession dated December 19, 2019, executed by Janet Transit, Victor Weingarten and Victor Weingarten, as Trustee of the Trust Created Under Subarticle (B) of Article Fourth of the Last Will and Testament of Irene Weingarten dated August 21, 1988 (Petitioners’ Exhibit 6a).

A copy of the judgment dated July 27, 2021, in the action entitled *BNB Bank, a New York banking corporation v Vosvetzein Transit, Inc.; Edgar Weingarten, Individually, and Piper Cab Corp.*, under Index No. 810112/2021E, states that upon the filing of the Joint Affidavit for Judgment by Confession of Edgar Weingarten, individually, as president of VT, and as president of Piper, signed on December 19, 2019, judgment is granted in favor of plaintiff in the sum of \$3,023,981.08, plus interest and costs, in the total amount of \$3,257,976.60 (Petitioners’ Exhibit 6b).

Attached to the judgment is a copy of the Joint Affidavit for Judgment by Confession dated December 19, 2019, effective October 28, 2019, which indicates that the affidavit was made for the purpose of entry of judgment in favor of plaintiff BNB Bank (as successor-in-interest to The Bridgehampton National Bank), its successors and assigns (Petitioners' Exhibit 6b).

Also attached to the judgment is an assignment of confession of judgment dated May 17, 2021, effective March 31, 2021. The assignment provides that Dime grants, assigns, transfers and conveys to Mott Haven all of its right, title and beneficial interest in and to the Joint Affidavit for Judgment by Confession dated December 19, 2019, executed by VT, Edgar Weingarten and Piper (Petitioners' Exhibit 6b).

“In addition to the grounds set forth in section 5015(a), a court may vacate its own judgment for sufficient reason and in the interests of substantial justice” (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 68 [2003]; *City of New York v OTR Media Group, Inc.*, 175 AD3d 1163, 1163 [1st Dept 2019]; *Advance v Saygan Global Steel, Ltd.*, 2022 WL 2058860, *1 [2d Dept 2022]). A party need not establish a reasonable excuse in order to be entitled to vacatur in the interest of justice (*Advance* at *1).

Moreover, “[t]he decision as to the setting aside of a default in answering is generally left to the sound discretion of the Supreme Court, the exercise of which will generally not be disturbed if there is support in the record therefor” (*Advance* at *1). “[A] court’s decision to vacate a default judgment will be reviewed on appeal for an abuse of discretion” (*Woodson* at 68).

It is well established that a litigant may not raise the legal rights of another (*Society of Plastics Indus. v County of Suffolk*, 77 NY2d 761, 773 [1991]; *New York County Lawyers' Ass'n v State*, 294 AD2d 69, 74 [1st Dept 2002]). “A plaintiff has standing to maintain an action upon alleging an injury in fact that falls within his or her zone of interest. ‘The existence of an injury in fact – an actual legal stake in the matter being adjudicated – ensures that the party seeking review has some concrete interest in prosecuting the action which casts the dispute ‘in a form traditionally capable of judicial resolution’” (*Silver v Pataki*, 96 NY2d 532, 539 [2001]; *Security Pacific Nat. Bank v Evans*, 31 AD3d 278, 279 [1st Dept 2006]).

Here, Petitioners have demonstrated that the interests of justice warrant vacatur of the Judgments because BNB Bank did not have the standing to obtain the Judgments in its name on July 27, 2021,³ as it had already assigned all of its rights and interest in the underlying Affidavits for Judgment by Confession to Mott Haven on March 31, 2021.

³ The actions were commenced on July 26, 2021. The Judgments were entered on July 27, 2021.

Contrary to Mott Haven’s arguments, CPLR § 1018 is not applicable here. CPLR § 1018 provides that: “Upon any transfer of interest, the action may be **continued by or against** the original parties unless the court directs the person to whom the interest is transferred to be substituted or joined in the action” (emphasis added). “CPLR 1018 addresses the situation in which a party transfers her interest in the subject matter of the action to another person **while the action is pending**” (Vincent C. Alexander, Practice Commentaries, McKinney’s Cons Laws of NY, CPLR 1018) (emphasis added). Here, the interests at issue were transferred to Mott Haven prior to the commencement of the prior actions, not during the prosecution of those actions. As such, CPLR § 1018 did not permit the prior actions to be commenced and prosecuted to judgment in BNB Bank’s name.

Accordingly, Petitioners’ order to show cause to vacate the Judgments is granted.⁴ In light of the foregoing, Petitioners’ motion for default judgment against BNB Bank is denied as moot.

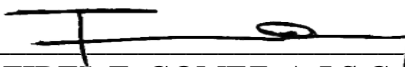
It is hereby

ORDERED that the Clerk vacate: (1) the judgment entered against Petitioners Janet Transit Inc., Victor Weingarten, individually, and as trustee of the Trust created under Subarticle (B) of Article Fourth of the Last Will and Testament of Irene Weingarten dated August 21, 1988, and in favor of Respondent BNB Bank, a New York banking corporation, on July 27, 2021, under Bronx County Supreme Court Index No. 810111/2021E, in the sum of \$1,617,511.54; and (2) the judgment entered against Petitioners Vosvetzein Transit Inc., Edgar Weingarten, and Piper Cab Corp., and in favor of Respondent BNB Bank, a New York banking corporation, on July 27, 2021, under Bronx County Supreme Court Index No. 810112/2021E, in the sum of \$3,257,976.60; and it is further

ORDERED that Petitioners serve a copy of this Decision and Order upon Respondents, with Notice of Entry, within thirty (30) days of the date hereof.

This constitutes the Decision and Order of this Court.

Dated: 6/15/22

Hon. 
FIDEL E. GOMEZ, A.J.S.C.

⁴ The Court makes no determination regarding the enforceability of the Joint Affidavits for Judgment by Confession by Mott Haven upon the use of appropriate procedures.