

Global Deposition Services, Inc. v B.E.S.C.R., Inc.

2006 NY Slip Op 30054(U)

June 13, 2006

Supreme Court, New York County

Docket Number: 0600220/0220

Judge: Sherry Klein Heitler

Republished from New York State Unified Court
System's E-Courts Service.

Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: SHERRY KLEIN HEITLER
Justice

PART 30

Global Deposition Service

INDEX NO. 600220/06

- v -

BESCR, INC. d/b/a
East Wood - Stern Deposition

MOTION DATE _____

MOTION SEQ. NO. 1001

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

is decided in accordance with the memorandum decision dated 6-13-06

FILED

JUN 26 2006

NEW YORK COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Dated: 6-13-06

Sherry Klein Heitler
SHERRY KLEIN HEITLER
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 30**

-----X
GLOBAL DEPOSITION SERVICES, INC.,

Index No. 600220/06

Plaintiff,

-against-

**INTERIM
DECISION & ORDER**

B.E.S.C.R., INC., d/b/a
EASTWOOD-STEIN DEPOSITION,

Defendant.

-----X
SHERRY KLEIN HEITLER, J.:

In this dispute involving outstanding bills for court reporting services, the plaintiff, Global Deposition Services, Inc. ("Global"), seeks a default judgment against defendant, B.E.S.C.R., Inc. d/b/a Eastwood-Stein Deposition ("Eastwood-Stein"). Defendant opposes this application.

On January 24, 2006, plaintiff commenced this action by service of Summons and Notice upon the Secretary of State of Illinois and by mailing, on January 31, 2006, a copy of the same to the address designated for service by the defendant Eastwood-Stein. Global now seeks, pursuant to C.P.L.R. §3215(a), to enter a default judgment, as the time for the defendant to answer or move with respect to the summons and notice has expired and the defendant has not answered or moved.

A defendant shall appear within thirty days of service of summons in an action where an official of a state is authorized to receive service in his behalf (see, C.P.L.R. §320). If a defendant fails to "appear, plead, or proceed to trial," the plaintiff may seek a default judgment against him (see, C.P.L.R. §3215[a]). However, if the period of delay is short, the defendant has a reasonable excuse for the failure to respond, there is no prejudice to the plaintiffs and the defendant has tendered a meritorious defense, a motion for default judgment may be denied (see, Smith v. Waldbaum's Supermarket, Inc., 99 A.D.2d 530, 530 [2d Dept., 1984]; see also, Parker v. I.E.S.I.N.Y. Corp., 279 A.D.2d 395, 395 [1st Dept., 2001]).

In determining the period when defendant's time to answer has expired, five days must be added for mailing to either the date of service upon the Secretary of State or upon the defendants (see, C.P.L.R. 2103[b][2]). Thus, service was completed sometime in late January or early February. Therefore, Global would have until late February or early March to appear or demand a complaint. Consequently, the defendant was approximately a month late in responding to the service of the summons when it sought this relief. The court finds that this delay is minimal. Further, it is noted that the plaintiff has not shown how it has been prejudiced by the delay.

As previously noted, defendant must show a reasonable excuse for the delay in answering the complaint and a meritorious defense in order to open up a default (see, CPLR §5015[a][1]). The Appellate Division Second Department has recently recognized "a good faith belief in settlement, supported by substantial evidence, constitutes a reasonable excuse for a default." (See, Armstrong Trading, Ltd. v. MBM Enterprises, 2006 WL 1413584 [N.Y.A.D., 2 Dept.]) Likewise, in Scarlett v. McCarthy (2 A.D.3d 623, [2nd Dept., 2003]), the court found that the fact that defense counsel was actively engaged in settlement negotiations with plaintiff's counsel and that the plaintiff's counsel never mentioned that he would be moving for leave to enter a default judgment constituted a reasonable excuse for a default in answering a complaint. Similarly, in Lehrman v. Lake Katonah Club, Inc. (295 A.D.2d 322, [2nd Dept., 2002]), the court found that settlement negotiations were a reasonable basis to excuse the failure to answer the complaint.

In this case, it is undisputed that the parties were in ongoing settlement negotiations. The defendant concedes that it owes plaintiff over \$50,000 and has paid \$10,000 to show good faith. In fact, the parties have worked on resolving a discrepancy in the amount the plaintiff is owed for some two months. The negotiations in this case, therefore, constitute a reasonable excuse for defendant's delay.

The court find that the defendant (although it alludes to having a meritorious defense) has not provided the court with an affidavit, from a person with personal knowledge, describing in detail the nature of its objection to the disputed amount. In addition, the defendant has not provided the court with a proposed answer.

Therefore, plaintiff's motion for a default judgment is held in abeyance. The defendant is to provide the plaintiff with a proposed answer and a detailed affidavit outlining its specific objections to the bills **on or before Friday, June 30, 2006**. Thereafter, plaintiff shall serve defendant with any response to said submission **on or before Thursday, July 13, 2006 at 2:00 PM**.

All papers shall be submitted to the court **on Monday, July 17, 2006, 10:30 AM**, at which time counsel shall appear for a conference.

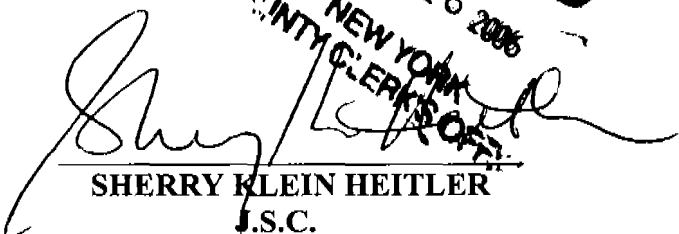
Accordingly, it is hereby

ORDERED that the motion for default judgment pursuant to C.P.L.R. §3215(a) is hereby held in abeyance; and it is further

ORDERED that all parties are to appear for a conference on **Monday, July 17, 2006 at 10:30 AM** at 60 Centre Street, Room 438, New York, New York, 10007.

This shall constitute the decision and order of the court.

DATED: JUNE 13, 2006

FILED
JUN 26 2006
NEW YORK
COUNTY CLERK'S OFFICE

SHERRY KLEIN HEITLER
J.S.C.