

**Mercury Pub. Affairs, LLC v Gramercy Park Servs.,
LLC**

2014 NY Slip Op 31757(U)

July 8, 2014

Supreme Court, New York County

Docket Number: 104570/11

Judge: Doris Ling-Cohan

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY
PRESENT: Hon. Doris Ling-Cohan, Justice Part 36

MERCURY PUBLIC AFFAIRS, LLC, D/B/A
IGR GROUP and FHGR,

Plaintiff,

INDEX NO. 104570/11

-against-

MOTION SEQ. NO. 005

GRAMERCY PARK SERVICES, LLC,
GRAMERCY PARK MEDICAL GROUP P.C.,
and RAYMOND SANCHEZ,

Defendants.

The following papers, numbered 1-6 were considered on the motion for to vacate default judgment:

<u>PAPERS</u>	<u>NUMBERED</u>
Notice of Motion/Order to Show Cause, — Affidavits — Exhibits & Memo	<u>1, 2, 3</u>
Answering Affidavits — Exhibits (& memo)	<u>4</u>
Interim Orders dated 2/5/14 & 2/19/14	<u>5, 6</u>

FILED

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Cross-Motion: Yes No

Upon the foregoing papers, it is

ORDERED that this motion by defendant Raymond Sanchez ("Sanchez") to vacate the October 30, 2013 default judgment entered against him is denied, as detailed below.

The court notes that this is not defendant Sanchez's first default. As reflected in the history of the case below, there were a series of defaults by defendant, during the course of the within litigation.

Plaintiff commenced this action for the payment of consulting services in the amount of \$137,000.

Defendant Sanchez failed to timely file an answer, which resulted in the filing by plaintiff of a motion for a default judgment. By order dated January 4, 2012, this court denied plaintiff's motion for a default judgment against defendant Sanchez and granted defendant Sanchez's cross-motion for leave to file a late answer, determining that defendant Sanchez had presented a reasonable excuse for

his default and a meritorious defense.

A preliminary discovery conference order was issued by this court dated January 4, 2012, and pursuant to such order, this case was scheduled for a discovery compliance conference on March 16, 2012. At the March 16, 2012 conference, defendant Sanchez appeared *pro se* and by “so ordered” stipulation dated March 16, 2012, deposition dates were rescheduled as they had not been completed as provided in the preliminary conference order, with a further discovery conference scheduled for May 4, 2012. After conference on May 4, 2012, at which defendant Sanchez also appeared *pro se*, this court issued an order again rescheduling the parties’ depositions, which had yet to be completed, and scheduling a further conference for June 15, 2012.

Defendant Sanchez failed to appear at the June 15, 2012 discovery conference, as well as the discovery conference scheduled for July 20, 2012. By order dated June 15, 2012, defendant Sanchez was specifically warned that his failure to appear at the July 20, 2012 conference would result in the granting of a default against him, in accordance with 22 NYCRR §202.27.

Thus, by order dated July 20, 2012, this court entered a default against defendant Sanchez, based upon his non-appearance at the two (2) previously scheduled discovery conferences, and referred the matter to a Special Referee, for an inquest on the issue of damages. Additionally, by order dated July 20, 2012, defendant Sanchez’s motion for summary judgment was denied, also based upon his failure to appear on the return date.

By order dated March 7, 2013, a second order was issued granting default against defendant Sanchez, for his failure to appear on his motion for reargument scheduled for November 21, 2012

and January 23, 2013, with an inquest to be held as to damages before a Special Referee. On or about, May 21, 2013, an inquest was held before Special Referee Lancelot B. Hewitt, at which defendant again failed to appear. By order dated August 8, 2013, it was determined that judgment be entered against defendants Gramercy Park Services, LLC and Raymond Sanchez, in the amount of \$96,400. On October 30, 2013, a judgment was entered in the amount of \$96,400, plus interest, costs and disbursements, totaling \$100,785.72.

According to plaintiff's counsel, on or about December 18, 2013, defendant Sanchez was served with an information subpoena and subpoena commanding his attendance at a deposition scheduled for January 15, 2014. On or about January 9, 2014, defendant Sanchez, now represented by counsel, filed the within motion to vacate the October 30, 2013 default judgment entered against him, pursuant to CPLR §5015.

CPLR §5015 (a)(1) permits a court to vacate a default judgment where there has been an "excusable default" by defendant, upon a showing of both a justifiable excuse for the default and a meritorious defense. *Navarro v A. Trenkman Estate, Inc.*, 279 AD2d 257, 258 (1st Dept 2001).

Here, defendant Sanchez failed to supply a sufficient excuse as to his many defaults in this case, to warrant vacatur of the default judgment, which the court notes, had been previously granted on January 4, 2012. While defendant Sanchez asserts as his alleged "excuse" that he was acting without counsel and that he has a medical condition, significantly, defendant Sanchez fails to explain in detail, his numerous defaults in appearing before this court and his failure to comply with court orders with respect to the completion of discovery. The hand-written medical documentation supplied by defendant Sanchez in support of his motion is lacking in that it is unsworn, dated

December 26, 2013 (well after defendant Sanchez's numerous defaults), without indicating dates of treatment, is entirely conclusory and merely states that "Mr. Sanchez is presently under [the doctor's] care for depression/anxiety, memory loss; he remains on medication and has been treated for this condition". Exhibit A (emphasis supplied), Order to Show Cause. Significantly, the doctor's notation does not provide any details or justification for the numerous defaults by defendant Sanchez in this case, which were over the course of approximately two (2) years.

Significantly, plaintiff asserts, and it is undisputed, that while defendant Sanchez has defaulted numerous times in this case due to an alleged medical condition, he was somehow concurrently able to prosecute a related case (*Sanchez et al v. Larry Kroll et al.*, Index No. 651458/2012), in which he is a plaintiff, despite the alleged medical condition. Nor does the supplied doctor's note explain why defendant Sanchez was impeded by his alleged condition as a defendant in this case, but not as a plaintiff in the related action.

Further, his alleged "meritorious defense" is only supported by his self-serving conclusory affidavit, in which he asserts that he is an employee.

Additionally, defendant fails to provide a sufficient excuse for his failure to appear at the numerous previously scheduled court ordered depositions in this case. Thus, as defendant Sanchez has failed to supply a sufficient excuse for his pattern of default in this case (consisting of at least six (6) non-appearances on scheduled court dates), the motion to vacate the default judgment is denied. *See Saunders v. City of New York*, 283 AD2d 213 (1st Dept 2001)(defendant's failure to appear at four scheduled court dates evinces a complete lack of regard for the court and the legal process, and not excusable); *Utica Mutual Insurance Company v. McCorvey, Jr.*, 116 AD3d 560 (1st Dept

2014)(pattern of defaults warranted denial of motion to vacate default judgment).

Accordingly, it is

ORDERED that defendant Raymond Sanchez's motion to vacate the default judgment dated October 30, 2013, is denied; and it is further

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this decision/order, with notice of entry, upon all parties.

Dated: 7/8/14


DORIS LING-COHAN, J.S.C.

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Check if Appropriate: DO NOT POST

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