

Rutnik & Corr CPA's P.C. v Guptill Farms, Inc.
2014 NY Slip Op 33554(U)
March 25, 2014
Supreme Court, Saratoga County
Docket Number: 2006576
Judge: Thomas D. Nolan
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STATE OF NEW YORK

SUPREME COURT

COUNTY OF SARATOGA

RUTNIK & CORR CPA'S P.C.,

Plaintiff,

-against-

DECISION AND ORDER
RJI No. 45-1-2013-1502
Index No. 2006576

GUPTILL FARMS, INC. and WILLIAM R. GUPTILL,

Defendants.

PRESENT: HON. THOMAS D. NOLAN, JR.
Supreme Court Justice

APPEARANCES: DAVID L. GANJE
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Albany, New York 12205

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Albany, New York 12207

SARATOGA COUNTY
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BALLSTON SPA, NY

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FILED

Between 2001 and 2003, plaintiff performed accounting and tax preparation services for defendant Guptill Farms, Inc. (Guptill, Inc.) under a retainer signed by its president, William R. Guptill (Guptill). The letter agreement, addressed to Guptill as president of Guptill, Inc., included the following sentence, “[y]ou [Guptill] personally guarantee any corporate liability owed to us [plaintiff]”. In 2006, plaintiff commenced this action to recover for its services. Following defendants’ failure to answer or otherwise appear, a default judgment was entered in February 2007 against defendants in the amount of \$50,251.96. The judgment remains unsatisfied. In July 2013, plaintiff commenced enforcement proceedings by serving, under

CPLR 5224 (a) (1) and (2), upon Guptill an subpoena duces tecum requiring production of documents and compelling him to appear and be deposed. The subpoena was served upon Guptill by leave and mail; specifically two copies were delivered to his wife at his usual place of abode, 326 Ridge Road, Marshfield, Maine, and thereafter, a third copy was mailed to him at that address. Defendant's Guptill's failure to comply with the subpoena prompted plaintiff, by order to show cause, to move for an order punishing defendant for contempt.

Defendants oppose and cross-move for an order quashing the subpoena and vacating the default judgment. Defendant contends the subpoena was not been properly served upon Guptill and was never served on Guptill, Inc., and thus, neither is in contempt. Defendants' cross motion is supported by their attorney's affidavit annexing the judgment roll filed in the County Clerk's Office and an affirmation of Guptill. Briefly, defendants contend there was a reasonable excuse for the default, namely that they had never been properly served with a summons and complaint, that when the action was commenced a receiver had been appointed in a legal proceeding brought against Guptill and Guptill, Inc. in the State of Maine, and that all mailings directed to defendants at their mailing address were forwarded to the receiver, and thus they never received notice of the commencement of the lawsuit. Defendants also contend they possess meritorious defenses, namely that Guptill was not personally responsible for Guptill, Inc.'s debts and that the plaintiff's billings are duplicative and deficient.

In opposition to the cross motion, plaintiff asserts that both defendants were been properly served, that defendants' then attorney was aware of the commencement of the action, and that under the retainer letter Guptill agreed to personally guarantee the corporation's debts.

First, the contempt application must be denied. Testimonial and duces tecum subpoenas

authorized by CPLR 5224 (a) are subject to the standard rules governing subpoena service. David D. Siegel, Practice Commentaries (McKinney's Cons Laws of NY Book 7B, CPLR C522K:2. Although more liberal rules now govern the service of information subpoenas under CPLR 5224 (a) (3), Judiciary Law § 2-b bars the service of testimonial and duces tecum subpoenas outside the State of New York.

Plaintiff's motion is denied, without costs, and that portion of defendant's cross motion to quash the subpoena is granted, all without costs.

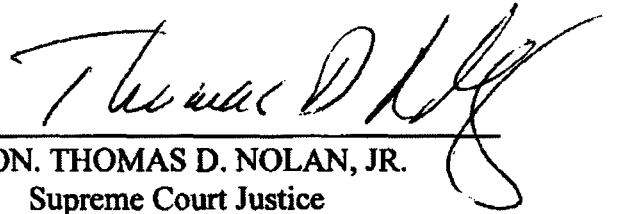
Now defendants' application to vacate the default judgment. Generally, to obtain vacature of a default judgment both a reasonable excuse for the default and a meritorious defense must be shown but not always, since "courts retain 'inherent discretionary power' to vacate their own judgments 'for sufficient reason and in the interests of substantial justice'" (citation omitted). Gurin v Pogge, 112 AD3d 1028 (3rd Dept 2013). Defendants do not proffer sufficient proof either of a reasonable excuse or a meritorious defense. Defendant Guptill's affirmation can not be considered since CPLR 2106 allows affirmations of only attorneys, physicians, osteopaths, and dentists. In any event, even if the court were to consider Guptill's affirmation, neither an excusable reason for defendants' default nor a meritorious defense has been established. Further, the proof demonstrates defendants were properly served and were in default. Moreover, the retainer letter explicitly states that Guptill guaranteed payment of the corporate obligation. Defendants' broad, generalized, and conclusory claims do not warrant that the court exercise its "inherent discretionary power" to vacate this judgment, approximately seven (7) years after it was entered, Cotter v Dukharan, 110 AD3d 1331 (3rd Dept 2013); Christiana Bank and Trust Co. v Eichler, and only after plaintiff initiated steps to enforce it.

Defendants' cross motion to vacate the default judgment is denied, without costs.

This constitutes the decision and order of the court. The original decision and order is returned to the counsel for plaintiff. All original motion papers are delivered to the Supreme Court Clerk/County Clerk for filing. Counsel for plaintiff is not relieved from the applicable provisions of CPLR 2220 relating to filing, entry, and notice of entry of the decision and order.

So Ordered.

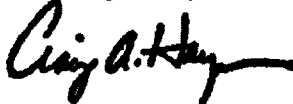
DATED: March 25, 2014
Saratoga Springs, New York



HON. THOMAS D. NOLAN, JR.
Supreme Court Justice

ENTERED

Craig A. Hayner



Saratoga County Clerk

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