

<b>David's Check Cashing, Inc. v WBP Operations, Inc.</b>
2016 NY Slip Op 33116(U)
March 14, 2016
Supreme Court, Bronx County
Docket Number: 22848/2014E
Judge: Julia I. Rodriguez
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF THE BRONX

-----X Index No. 22848/2014E

David's Check Cashing, Inc.,  
Plaintiff,

-against-

**DECISION and ORDER**

WBP Operations, Inc. and  
Joseph Cordon,  
Defendants.

Present:

Hon. Julia I. Rodriguez  
Supreme Court Justice

-----X  
Recitation, as required by CPLR 2219(a), of the papers considered in review of defendants' OSC to vacate a judgment pursuant to CPLR 5015(a).

<u>Papers Submitted</u>	<u>Numbered</u>
OSC & Affidavit	1
Affirmation in Opposition & Exhibits	2
Reply Affidavit & Exhibits	3
Sur-Reply Affidavit of M. Bardach	4

This action was commenced by Plaintiff to recover monies allegedly owed by the Defendants pursuant to a Promissory Note executed and delivery by the Defendant WBP Operations, Inc. ("WBP") on November 12, 2010, which Note was guaranteed by Defendant Joseph Cordon. Plaintiff served a copy of the Summons with Notice and Complaint filed in this action upon Cordon on June 21, 2014 at 359 2<sup>nd</sup> Street, Jersey City, New Jersey, the residence address provided by Cordon in the Promissory Note. Defendants failed to appear in the action. In a Decision and Order dated October 3, 2014, the Hon. John A. Barone, J.S.C granted summary judgment in favor of the Plaintiff. A Judgment in Plaintiff's favor and against the Defendants, in the total amount of \$48,121.21, was signed by Justice Barone on April 29, 2015 and filed in the Office of the Bronx County Clerk on May 5, 2015.

Defendants now move, pursuant to CPLR 5015(a), to vacate that Judgment on the ground that Defendants were not served with the Summons with Notice and Complaint and that they have a meritorious defense to the action.

In support of the motion, Defendants submitted, *inter alia*, the affidavit and reply affidavit of Joseph Cordon, the Promissory Note and Guaranty at issue, several email

communications and documentation concerning the sale by Cordon of a property located at 389 Monmouth Street, Jersey City, NJ. In his affidavit, Cordon states that he never received notice of this action until the judgment appeared on his credit report. In his reply affidavit, Cordon states that on the date of the alleged service, June 21, 2014, his “current home address was 25 Branchbrook Place, No. 1F, Newark, New Jersey 07104.” The Promissory Note for the amount of \$50,000.00, dated November 12, 2010, was signed by Joseph Cordon as President of WBP, the borrower. The Guaranty, also dated November 12, 2010, was signed by Joseph Cordon in his individual capacity. A “HUD-1 Settlement Statement,” dated April 10, 2014, for the sale of the property located at 389 Monmouth Street, Jersey City, NJ lists the name and address of the seller as Joseph A. Cordon, 359 2<sup>nd</sup> Street, Jersey City, NJ 07302. Documents from the Office of the City Assessor in Jersey City, New Jersey list Joseph A. Cordon, 359 Second Street, Jersey City, NJ as the owner of the Monmouth Street property in 2013 and 2014. In 2015, the owner of the property is listed as 389 Monmouth LLC. In an email dated 11/16/2010, sent by Cordon to Ira W. Krell, CFO of David’s Financial Corp., Cordon raises several concerns relating to “the customer files for Flushing and Gates that were delivered to [Cordon].” Krell responded to each of those concerns in an email of the same date. In an email dated 11/17/2010, from Cordon to Krell, Cordon states only “Thanks for the information.”

In his reply affidavit, Cordon contends that he has a meritorious defense to the action because he does not owe “any monies to plaintiff.” While he “admit[s] to signing the personal guaranty of payment at the time of closing, what [he] did not know [was] that the transaction to sell 2 of plaintiff’s check cashing locations was wrought with false representations.” Had he know<sup>n</sup> of the “falsities of said representations,” Cordon states, he would “not have tendered the sum of \$500,000 for the locations.” Cordon does not provide any information as to either the nature of the false representations or by whom and when the false representations were made to him. Nor does Cordon dispute that, while Defendants made all scheduled payments on the loan from December 2010 through July 2013, no payments were made after July 2013.

In opposition to the motion, Plaintiff submitted, *inter alia*, the affidavit of service of its process server, the reply affidavit of Matthew Bardach, and the Promissory Note, Guaranty and

Amortization Schedule for the \$50,000.00 loan. The affidavit of service indicates that the Summons with Notice and Complaint was served on Cordon on June 21, 2014 at 11:20 a.m. at the 359 2<sup>nd</sup> Street address by “delivering a true copy thereof personally to CARMEN NARZARIO . . . who resides at 359 2<sup>nd</sup> Street . . . and who acknowledged that she is authorized to accept service for the Defendant and will deliver said papers to the Defendant.” Those documents were also mailed to Cordon at that address. In his affirmation, Plaintiff’s attorney states the none of the documents mailed by his firm to Cordon at 359 2<sup>nd</sup> Street, including the Summons with Notice and Complaint, Motion for Summary Judgment, Notice of Settlement and proposed Judgment and Judgment with Notice of Entry were returned to his office by the post office. The Amortization Schedule indicates that from December 2010 through October 2015 monthly payments of \$633.38 were due on the loan and that a final payment of \$31,145.38 due in November 2015.

In his reply affidavit, Matthew Bardach, Plaintiff’s President, states that “ [i]t must be noted that the Asset Purchase Agreement for Defendants’ purchase of the two (2) stores was entered into on July 23, 2006.” Bardach also states that “[w]hile [Cordon] states that Plaintiff misrepresented certain material facts, he does not offer one illustration of a fact that was misrepresented to him.” Bardach further states that Cordon “is a businessman who was represented in his purchase of said stores by an attorney.” According to Bardach, Cordon “had access to any financial data he desired during a due diligence period that extended for more than four (4) years” and “was provided with audited financial statements as well as the New York State Banking Department Reports for each store.” Also, Cordon was “afforded access to both stores at any time in order to review all source material used in the preparation of the financial statements and Banking Department reports, and he did present himself at the stores for that purpose.” At no time since the email he sent to Ira Krell on 11/17/10, Bardach states, has Cordon had any contact with Plaintiff or made any further request for data. Bardach contends that Cordon “has never expressed any concern about the value of the business, or that he has ‘overpaid’ which he is now alleging.” According to Bardach, when Cordon “elected to close both businesses in August 2013, he stopped making his Note payments to the Plaintiff . . . and

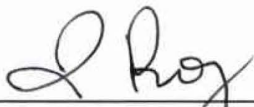
that “[i]t was a known fact in the industry that the check cashing business had slowed down, a fact which did not escape other stores owned and operated by the Plaintiff.” Business was “down” for everyone, Bardach states, and Cordon “elected to exit the industry and cease making any further payments associated therein.”

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In order to vacate a judgment pursuant to CPLR 5015(a), a defendant must establish a reasonable excuse for the default and a meritorious defense. See CPLR 5015(a)(1); *Liberty Taxi Management, Inc. v. Gincherman*, 32 A.D.3d 276, 820 N.Y.S.2d 49 (1<sup>st</sup> Dept. 2006). The affidavit of service of Plaintiff’s process server constitutes *prima facie* evidence of proper service of the summons with notice and complaint. See *Reem Contracting v. Altschul & Altschul*, 117 A.D.3d 583, 986 N.Y.S.2d 446 (1<sup>st</sup> Dept. 2014). Given that none of the documents mailed to Cordon at the 359 2<sup>nd</sup> Street address were returned by the post office, Cordon’s general denial of receiving any of the documents in this case is insufficient to rebut Plaintiff’s showing that service was proper. See *Public Adm’r of County of NY v. Markowitz*, 163 A.D.2d 100, 557 N.Y.S.2d 348 (1<sup>st</sup> Dept. 1990). Also, Cordon’s claim that he would not have paid \$500,000.00 to purchase two check cashing stores had certain unspecified, false representations not been made to him by certain unidentified parties is insufficient to establish that Defendants have a meritorious defense to the action. Notably, Cordon does not dispute that Defendants made all payments due on the loan for more than two and a half years then suddenly stopped making any payments on the loan in August 2013.

Based on the foregoing, Defendants’ motion to vacate the Judgment, pursuant to CPLR 5015(a), is **denied**.

Dated: Bronx, New York  
March 14, 2016

  
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Hon. Julia I. Rodriguez, J.S.C.