

Nicalucabry, LLC v Yogorino NY, Ltd

2017 NY Slip Op 31480(U)

July 10, 2017

Supreme Court, New York County

Docket Number: 161014/2015

Judge: Erika M. Edwards

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This opinion is uncorrected and not selected for official publication.

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

NICALUCABRY, LLC,

Index No.: 161014/2015--

Plaintiff,

DECISION/ORDER

-against-

YOGORINO NY, LTD, YANA KORS, and
VYACHESLAV GRINSHTEIN,

Defendants.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered
Notice of Motion and Affidavits/Affirmations/ Memos of Law annexed	<u>1</u>
Notice of Cross-Motion and Affidavits/ Affirmations/Memos of Law annexed	<u>2</u>

ERIKA M. EDWARDS, J.:

Defendants Yogorino NY, LTD’s and Yana Kors’ motion to vacate and set aside their default in appearing and opposing Plaintiff’s motion decided on September 20, 2016; to vacate and set aside the monetary judgment entered against them on September 20, 2016; or in the alternative, grant leave and/or additional time to submit opposing papers to Plaintiff’s Motion dated May 23, 2016 is GRANTED in part. Plaintiff’s cross-motion for entry of judgment against the Defendants is DENIED.

This action arises from the alleged default under the terms of a commercial lease by the commercial defendant Yogorino NY, LTD (“Yogorino”) and individual defendants Yana Kors (“Kors”) and Vyacheslav Grinshtein (“Grinshtein”). The action was commenced by electronic service of a Summons and Complaint on or about October 27, 2015. On or about December 16,

2015, Defendants Yogorino and Kors interposed an Answer through their previous attorney. Defendant Grinshtein never answered the complaint or otherwise appeared in this action. On May 24, 2016, Plaintiff moved for summary judgment against Defendant Kors and default judgment against Defendant Grinshtein, as guarantors, on the second cause of action for base and additional rent owed and on the fourth cause of action for attorney's fees (motion sequence 001). Per multiple stipulations between Plaintiff and previous counsel for Defendants, opposition to the motion was eventually extended to July 25, 2016. Since previous counsel failed to oppose the motion, Defendants retained new counsel who filed a "Consent to Change Attorney" on July 28, 2016. New counsel for Defendants argues that he did not have the opportunity to timely submit opposition to the motion. Plaintiff argues that the motion was administratively adjourned by the motions support office on three subsequent dates which resulted in a final adjournment date of September 9, 2016. On September 9, 2016, the motion was marked as fully submitted without opposition. The court granted the motion without opposition on September 20, 2016. Defendants Yogorino and Kors now move to vacate and set aside the court's September 20, 2016 Decision and Order or alternatively for leave to submit opposition papers to motion sequence 001. Plaintiff opposes the instant motion and cross-moves for entry of judgment against Defendants.

New York courts favor resolution of actions on their merits rather than on default (*Picinic v Seatrain Lines, Inc.*, 117 AD2d 504, 508 [1st Dept 1986]). As such, there is a liberal policy towards "opening default judgments in furtherance of justice so that parties may have their day in court" (*id.*). To vacate a default judgment, defendant must demonstrate: (1) a reasonable excuse for the default; and (2) a meritorious defense to the action (*Navarro v A. Trenkman Estate, Inc.*, 279 AD2d 257, 258 [1st Dept 2001]). "Assessment of the sufficiency of the excuse proffered for the delay and the adequacy of the merit of the action are consigned to the sound

discretion of the court” (*Bengal House Ltd. v 989 3rd Ave., Inc.*, 118 AD3d 575, 576 [1st Dept 2014]). “The determination whether a reasonable excuse has been offered is sui generis and should be based on all relevant factors, among which are the length of the delay chargeable to the movant, whether the opposing party has been prejudiced, whether the default was willful, and the strong public policy favoring the resolution of cases on the merits” (*Chevalier v 368 E. 148th St. Assoc, LLC*, 80 AD3d 411, 414 [1st Dept 2011]). Law office failure may constitute a reasonable excuse for vacating a default judgment (*Mutual Marine Office, Inc. v. Joy Const. Corp.*, 39 AD3d 417 [1st Dept 2007]).

The Court finds that Defendants established a reasonable excuse for their failure to timely oppose the motion for summary and default judgment and they have set forth a potential meritorious defense. In addition, there is no evidence that Plaintiff suffered any prejudice and the delay was relatively brief. Therefore, this Court grants Defendants Yogorino’s and Kors’ motion to the extent that Defendants Yogorino and Kors have leave to file opposition to Plaintiff’s motion for summary judgment and default judgment dated May 23, 2016 (motion sequence 001) by August 11, 2017. If Defendants file their opposition by August 11, 2017, Plaintiff has leave to file a reply by August 25, 2017. The parties shall appear for oral argument on the motion for summary judgment on September 7, 2017. However, if Defendants Yogorino and Kors fail to file their opposition by August 11, 2017, the September 20, 2016 Decision and Order will remain in effect as is and Plaintiff will have leave to renew its cross-motion at that time. As such, Plaintiff’s cross-motion to enter judgments against Defendants is denied at this time, without prejudice with leave to renew. Furthermore, this court will not disturb its previous ruling that Defendant Grinshtein was in default.

As such, it is hereby

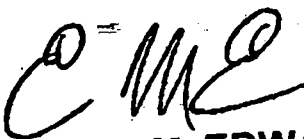
ORDERED that Defendants Yogorino NY, LTD's and Yana Kors' motion to vacate and set aside their default in appearing and opposing Plaintiff's motion decided on September 20, 2016; to vacate and set aside the monetary judgment entered against them on September 20, 2016; or in the alternative, grant leave and/or additional time to submit opposing papers to Plaintiff's Motion dated May 23, 2016 is **GRANTED** in part to the extent that Defendants Yogorino NY, LTD and Yana Kors have leave to file opposition to Plaintiff's Motion for Summary Judgment and Default Judgment dated May 23, 2016 (motion sequence 001) by August 11, 2017. If Defendants file their opposition by August 11, 2017, Plaintiff has leave to file a reply by August 25, 2017; and it is further

ORDERED that the Clerk shall restore the case to active status; and it is further

ORDERED that all parties shall appear for oral arguments on Plaintiff's motion for summary judgment and default judgment on Thursday, September 7, 2017 at 9:30 a.m., in Part 47, located at Room #320, 80 Centre Street, New York, New York; and it is further

ORDERED that any relief not expressly addressed in this order has nonetheless been considered and is hereby denied.

Date: July 10, 2017


HON. ERIKA M. EDWARDS
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