

Triborough Bridge & Tunnel Auth. v Espinal
2017 NY Slip Op 31604(U)
July 31, 2017
Supreme Court, New York County
Docket Number: 450194/2016
Judge: Kathryn E. Freed
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. KATHRYN E. FREED, J.S.C.
Justice

PART 2

-----X

TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY,

Plaintiff,

INDEX NO. 450194/2016

MOTION DATE _____

- v -

MOTION SEQ. NO. 002

GEORGE ESPINAL, JR.,

Defendant.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 13, 14, 15, 16

were read on this application to/for Vacate Default Judgment

**Upon the foregoing documents, it is
ordered that the motion is denied.**

By order dated March 20, 2017 and entered March 23, 2017, this Court granted the motion by plaintiff Triborough Bridge and Tunnel Authority (“the TBTA”) seeking leave to enter a default judgment against defendant pro se George Espinal in the amount of \$18,234, consisting of \$1,579 in unpaid EZ pass tolls and \$16,665 in unpaid violations and court fees. Defendant now moves, pursuant to CPLR 5015(a), to vacate the judgment against it. NYSCEF Doc. 12.¹ Plaintiff opposes the motion. After a review of the parties’ motion papers and the relevant statutes and case law, the motion is **denied**.

¹ All references are to the NYSCEF document filing numbers in connection with this matter.

Pursuant to CPLR 5015 (a) (1), “[t]he court which rendered a judgment or order may relieve a party from it upon such terms as may be just, on motion of any interested person with such notice as the court may direct, upon the ground of, [as is relevant here,] excusable default, if such motion is made within one year after service of a copy of a judgment or order with written notice of its entry upon the moving party.” To establish entitlement to vacatur of an order directing entry of a default judgment, the defendant must demonstrate a reasonable excuse for the default and a potentially meritorious defense. *See Travers v Kulynych*, 139 AD3d 611, 611 (1st Dept 2016); *Singh-Mehta v Drylewski*, 107 AD3d 478, 478 (1st Dept 2013); *Cummings v Rosoff*, 101 AD3d 713, 714 (2d Dept 2012).

In support of his motion, defendant argues that the default judgment must be vacated “due to improper service.” Doc. 14. Although defendant maintains that he was “not served properly or informed of any court date” (id), he does not specify whether plaintiff failed to serve him with the summons and complaint or with plaintiff’s motion for a default. Additionally, his conclusory assertion regarding improper service is insufficient to rebut the presumption of proper service of the summons and complaint and motion for default raised by the process server’s affidavits of service. Docs. 4 and 7, respectively. *See Wells Fargo Bank, N.A. v Kissi*, 146 AD3d 407 (1st Dept 2017).

Although defendant maintains that he served a timely answer in April of 2016, the answer was not signed by defendant and was not filed with this Court until November 21, 2016 (NYSCEF Doc. 10), over 8 months after the summons and complaint were served.

Defendant maintains that his default must be vacated because he has a meritorious defense to his claim, i.e., that the “EZ Pass Amnesty Program accepted a check from him in the amount of \$168 to vacate [his entire] debt on 7/18/16” (Doc. 14). However, the only proof of such a payment is not annexed to his motion papers, but rather to a letter he wrote to this Court on July 18, 2017. The letter, which was not efiled, as required by this Court, contained a “Notice of Violation Enforcement Action” dated June 15, 2016 advising defendant that he would be granted amnesty if the TBTA received a payment of \$168, rather than the \$648 due as of that date, by July 15, 2016. Although defendant annexes to his letter a canceled check payable to the TBTA in the amount of \$168, the draft is dated July 18, 2016, three days after the deadline for receipt of the amnesty payment, and it was not cashed until July 19, 2016.² Thus, this Court rejects defendant’s assertion that he has a meritorious defense to the claim and is constrained to deny the motion.

In light of the foregoing, it is hereby:

² Although defendant’s motion was adjourned from June 4 until July 25, 2017 in order to allow him to submit this information, this Court notes that he failed to appear for oral argument on the adjourned date of the motion.

ORDERED that the motion by defendant George Espinal, Jr. is denied; and it is further

ORDERED that this constitutes the decision and order of the court.

HON. KATHRYN FREED
JUSTICE OF SUPREME COURT



HON. KATHRYN E. FREED, J.S.C.

7/31/2017

DATE

CHECK ONE:

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CASE DISPOSED

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GRANTED

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DENIED

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SETTLE ORDER

☐

DO NOT POST

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NON-FINAL DISPOSITION

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GRANTED IN PART

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SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

OTHER

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REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: