

Jweinat v Abbassi
2018 NY Slip Op 31145(U)
April 27, 2018
Supreme Court, Dutchess County
Docket Number: 50005/2016
Judge: James D. Pagones
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To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

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AFAF JWEINAT,

Plaintiff,

DECISION AND ORDER

-against-

Index No. 50005/2016

SALEM ABBASSI,

Defendant.

-----X

PAGONES, J D., A.J.S.C.

Plaintiff moves for order, pursuant to CPLR 5015(a)(1), vacating this Court's order of November 30, 2017, which dismissed this action based upon the plaintiff's counsel's default in appearing.

The following papers were considered:

Notice of Motion-Affirmation-Exhibits 1-7-	1-10
Affidavit of Service	
Affirmation in Opposition-Exhibits A-H-	11-20
Affidavit of Service	
Reply Affirmation-Affidavit of Service	21-22

Upon the foregoing papers, it is hereby ordered that the motion is decided as follows:

By way of background, the parties were directed to appear for a compliance conference on Tuesday, November 21, 2017 at 11:00 a.m. On November 21, 2017, plaintiff failed to appear at the compliance conference, which was attended by the defendant's

counsel. My principal court attorney later spoke with staff from Sobo & Sobo, LLP and directed that they submit correspondence for my consideration providing a reason for their failure to appear. As of November 30, 2017, said correspondence was not received. This Court then issued an order dismissing the action, pursuant to 22 NYCRR §202.27(b), based upon plaintiff's counsel's failure to appear at a scheduled conference.

Consequently, in order to vacate the dismissal of the action, the plaintiff is required to demonstrate a reasonable excuse for her failure to appear and a potentially meritorious cause of action (see *Siculan v. Koukos*, 74 AD3d 946 [2nd Dept 2010]).

In support of her motion to vacate, counsel for the plaintiff submits the affirmation of Raymond J. Iaia, Esq., an associate with the law firm of Sobo & Sobo, LLP. Mr. Iaia indicates that "unusual circumstances contributed to the November 21, 2017 date not being calendared after the August 30, 2017 conference." Specifically, Mr. Iaia stated that the August 30, 2017 conference was attended by Stuart Mosbacher, Esq., whose office is in Sobo & Sobo LLP's Middletown office. Mr. Mosbacher informed Mr. Iaia that after the appearance, he informed the office manager of the new date and time of the upcoming conference. However, the conference was never calendered due to law office failure.

A client should not be deprived of her day in court by her attorney's neglect or inadvertent error, especially where the other party cannot show prejudice and her position has merit (see *Chelli v. Kelly Group, P.C.*, 63 AD3d 632 [1st Dept 2009]). Given plaintiff's counsel's alleged confusion as to the calendaring of the compliance conference, the Court finds that the plaintiff has demonstrated a reasonable excuse for her default in appearing (see *Nahum v. Mansour*, 109 AD3d 548 [2nd Dept 2013]). Moreover, the verified complaint and verified bill of particulars set forth a potentially meritorious claim (see CPLR §105[u]; compare *Egan v. Federated Dept. Stores, Abraham & Straus Div.*, 108 AD2d 718 [2nd Dept 1985]).

Notwithstanding the fact that this Court has found both a reasonable excuse for the default in appearing and a meritorious cause of action, the Court hereby directs the law firm of Sobo & Sobo, LLP to pay the defendant's costs associated with their respective appearances on November 21, 2017. Defendant, through counsel, is directed to submit an affirmation of costs and proposed order within thirty (30) days from the date of this decision and order (see *In re Esposito*, 57 AD3d 894 [2nd Dept 2008]; *Levy Williams Const. Corp. v. U.S. Fire Ins. Co.*, 280 AD2d 650 [2nd Dept 2001] appeal denied by 96 NY2d 853).

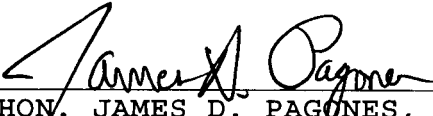
Based upon the foregoing, the Court's order of November 21, 2017 is vacated. This matter is restored to the Court's

calender. Counsel are directed to appear for a further compliance conference on May 23, 2018 at 10:00 a.m. Adjournments are only granted with leave of the Court.

The foregoing constitutes the decision and order of the Court. This decision and order has been filed electronically.

Dated: April 27, 2018
Poughkeepsie, New York

ENTER


HON. JAMES D. PAGONES, A.J.S.C.

TO: RAYMOND M. IAIA, ESQ.
SOBO & SOBO, LLP
Attorneys for Plaintiff
One Dolson Avenue
Middletown, New York 10940
efile@sobolaw.com

SARAH SEARS, ESQ.
PENINO & MOYNIHAN, LLP
Attorneys for Defendant
1025 Westchester Avenue, Suite 403
White Plains, New York 10604
dfairchild@peninomoynihanolaw.com

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