

Battaglia Family L.P. v Mazza
2019 NY Slip Op 31539(U)
April 16, 2019
Supreme Court, Richmond County
Docket Number: 151644/2018
Judge: Jr., Orlando Marrazzo
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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

**BATTAGLIA FAMILY LIMITED PARTNERSHIP,
CAMILLE SOCCI AS TRUSTEE FOR THE
AMANDA BATTAGLIA IRREVOCABLE TRUST,
dated January 7, 2011, and as Trustee of the BRITANI
BATTAGLIA IRREVOCABLE TRUST
dated January 7, 2011,**

DECISION AND ORDER

DCM PART 21

Plaintiffs,

HON. ORLANDO MARRAZZO, JR.

- against -

Index No.: 151644/2018

**LARAINÉ MAZZA as TRUSTEE OF THE ALEX
BATTAGLIA IRREVOCABLE TRUST, DENA
BATTAGLIA and VICTOR BATTAGLIA,**

Motion No. **004**

Defendants.

The following papers numbered 1 to 6 were fully submitted on the 19th day March, 2019:

	Papers Numbered
Notice of Motion to Vacate Default Judgment, dated Feb. 21, 2019.....	1
Memorandum of Law in Support of Defendants' Motion to Vacate Default, with Exhibits, dated February 21, 2019.....	2
Affirmation in Support of Defendants' Motion to Vacate Default, dated February 21, 2019.....	3
Proposed Order Granting Defendants' Motion to Vacate Default dated February 21, 2019.....	4
Affirmation in Opposition, dated March 6, 2019.....	5
Affirmation in Reply, with Exhibits, dated March 15, 2019.....	6

Reply Memorandum of Law in Further Support of Defendants’ Motion to Vacate Default, dated March 15, 2019.....7

Defendants moved to vacate their default and judgment which was granted on February 14, 2019. The Court hereby denies Defendants’ Motion in its entirety.

In Defendants’ original Motion to Dismiss the Complaint, Defendants argued that the Plaintiffs’ Complaint should be dismissed based on an existing prior proceeding in the State of New Jersey for similar or same relief. This Court found this argument unavailing based on the submission by Plaintiffs of a Notice of Voluntary Dismissal that had been filed on June 12, 2018 with the Superior Court of New Jersey, Chancery Division, Monmouth County (hereinafter “New Jersey Court”). The Notice of Voluntary Dismissal was for all claims made by the Battaglia Family Limited Partnership, Camille Socci as Trustee for the Amanda Battaglia Irrevocable Trust, as Trustee of the Britani Battaglia Irrevocable Trust and Victor Battaglia in the verified complaint, docketed under MON-C-67-18 (hereinafter “New Jersey Action”).

As noted by this Court, the dismissal was filed with the New Jersey Court in accordance with NJ Ct. R. 4:37-1(a), which provides, in part, “an action may be dismissed by the plaintiff without court order by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs . . .” NJ. Ct. R. 4:37-1(a). While consent was not required for the filing of the Notice of Voluntary Dismissal, Plaintiffs’ counsel that counsel for Dena Battaglia never objected to the filing of the Notice of Voluntary Dismissal. Plaintiffs’ counsel also argued in his opposition to Defendants’ original Motion to Dismiss that based on the Assignment Agreements dated January 5, 2011, the forum

selection clause states that New York is the exclusive forum and therefore dismissal of the New Jersey action was thus proper. As such, this Court denied Defendants' Motion to Dismiss after it determined that no prior action existed in the State of New Jersey when the instant action was properly brought in the exclusive jurisdiction as provided by the Assignment Agreements.

This Court takes judicial notice that on January 23, 2019, the Superior Court of the State of New Jersey, by the order of the Honorable Kathleen A. Sheedy, also held that the New Jersey action had been voluntarily dismissed. This determination was not disclosed by Defendants.

In their motion to vacate the default, Defendants' argue that their default was based on their mistaken belief that a motion to reargue extends the time to answer a complaint. In addition, Defendants allege their meritorious defense to be that Defendant Dena Battaglia is vested with ownership of assets of the trust.

In opposition, Plaintiffs allege that Defendants have failed to proffer a reasonable excuse and a meritorious defense. Plaintiffs argue that Defendants have failed to move to vacate the subject trusts and that Defendants' claim, in the instant action, of a purported ownership interest in trust assets are time barred and are also barred by the statute of frauds.


To prevail on a motion to vacate their default, Defendants were required to demonstrate both a reasonable excuse for their default and the existence of a meritorious defense (*see* CPLR 5015[a][1]; *see also* *Zovko v. Quittner Realty, LLC*, 162 AD3d 1102, 1104 [2nd Dept, 2018]). A motion to vacate is addressed to the trial court's sound discretion (*see* *Simak v. Simak*, 121 AD3d 1090, 1090-1091 [2nd Dept, 2014]). Here, Defendants have failed to demonstrate a reasonable excuse for their default. However, even if Defendants' had proffered a reasonable excuse for their default, they have also failed to establish a meritorious defense.

Accordingly, Defendants' motion to vacate their default and judgment thereon is denied in its entirety.

This constitutes the decision and order of the Court.

Dated: April 8, 2019

1p

ENTER

J. S. C.

Hon. Orlando Marrazzo, Jr.
Acting Supreme Court Justice