

**Shanghai Jinshan Import & Export Corp. Ltd. v
Chia Wenlan**

2020 NY Slip Op 30077(U)

January 3, 2020

Supreme Court, New York County

Docket Number: 650291/2017

Judge: Robert R. Reed

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ROBERT R. REED PART 43

Justice

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SHANGHAI JINSHAN IMPORT & EXPORT CORPORATION LIMITED,

Plaintiff,

INDEX NO. 650291/2017

MOTION DATE N/A

MOTION SEQ. NO. 003

- v -

CHIA WENLAN A/K/A WENLAN CHIA D/B/A TWINKLE BY WENLAN, TRANSART, INC.

Defendant.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57

were read on this motion to VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Upon the foregoing documents, it is ordered that this motion is granted in part and denied in part.

Plaintiff commenced this action alleging defendants breached their contract by failing to pay plaintiff. On or about November 13, 2017, plaintiff moved this court for an order for default judgment, alleging that defendant defaulted under their settlement stipulation. On or about April 9, 2018, this court denied plaintiff's motion citing plaintiff's failure to serve defendant Transart Inc. On or about April 17, 2018, plaintiff moved this court to reargue, asserting that the court was mistaken in denying its previous motion because plaintiff was not seeking to enter judgment against Transart Inc. but against the party which was served with the summons and complaint -- Chia Wenlan a/ka Wenlan Chia d/b/a Twinkle by Wenlan. On or about February 5, 2019, this court issued its decision and granted plaintiff's motion and directed the clerk to enter judgment against said defendant.

Said defendant now moves, pursuant to CPLR 5015 (a) (1), 5015 (a) (3) and CPLR 317, for an order (1) to vacate the judgment against defendant, (2) to stay enforcement proceedings, (3) to release defendant's restrained bank accounts, (4) to vacate any and all income executions, (5) to return any and all monies received by plaintiff as a result of the judgment, and (6) to dismiss the complaint against defendant. In opposition, plaintiff argues that there is no basis in law or fact to warrant the granting of defendant's motion, that defendant has no meritorious defense, and that defendant Chia Wenlan was properly named as a defendant.

A court may vacate a default in opposing a motion where the moving party demonstrates both a reasonable excuse for the default and the existence of a meritorious defense to the action. (*SS Constantine & Helen's Romanian Orthodox Church of Am. v. Z. Zindel, Inc.*, 44 AD3d 744). It is within the court's sound discretion to determine whether the movant's excuse for the default is sufficient (*id.*). "In order to demonstrate a meritorious defense, a party must submit an affidavit from an individual with knowledge of the facts. The affidavit submitted from such individual must make sufficient factual allegations; it must do more than merely make conclusory allegations or 'vague assertions'" (*Peacock v. Kalikow*, 239 AD2d 188). Here, defendant Chia Wenlan asserts that she could not have individually defaulted under the stipulation because she was not a party to the stipulation. Said defendant argues that she reached a settlement with plaintiff on behalf of Transart Inc. in her representative capacity. On or about May 29, 2018, said defendant appeared pro se in the submissions part of this court and appeared in front of court personnel and, she now asserts, mistakenly thought she was opposing plaintiff's motion for default judgment. In viewing the circumstances of the default, defendant's failure can be viewed as reasonable, in that it was isolated and apparently the result of a procedural misunderstanding by a relatively unsophisticated pro se litigant, with no evidence of willful

neglect (*see SS Constantine & Helen's Romanian Orthodox Church of Am. v. Z. Zindel, Inc., supra*).

Defendant also submits an affidavit of merit in which she asserts that she was improperly named as a defendant, and, in any event, that she is shielded from individual liability by virtue of Transart Inc.'s corporate form (*see Bartle v. Home Owners Cooperative, Inc.*, 309 NY2d 103; *see also Savoy Record Co. v. Cardinal Export Corp.*, 254 NY2d 521). Defendant presents records from the New York State Department of State Corporations and State Records Division establishing both Transart Inc.'s incorporation and Transart Inc.'s assumption of the name "Twinkle by Wenlan." Thus, defendant has demonstrated a meritorious defense to the causes of action against her -- that is, that she is not a proper party to the action and that she is protected from individual liability due to her business's corporate form.

Accordingly, it is

ORDERED that defendant's motion seeking to vacate the order of this court dated February 5, 2019 is granted; and it is further

ORDERED that the order of this court dated February 5, 2019 is hereby vacated and that any judgment entered based thereon is hereby vacated, and that the Clerk is respectfully directed to mark his records and files accordingly; and it is further

ORDERED that any enforcement proceedings arising from or related to the order of this court dated February 5, 2019 be discontinued immediately, and that any restraints on defendant Chia Wenlan's bank accounts and/or any executions upon defendant Chia Wenlan's income be lifted immediately, and it is further

ORDERED that any monies received by plaintiff Shanghai Jinshan Import & Export Corporation Limited from defendant Chia Wenlan individually by reason of any enforcement

activity arising from or related to the order of this court dated February 5, 2019 be returned to defendant Chia Wenlan immediately, with interest at a rate of nine percent per annum from the date of collection; and it is further

ORDERED that defendant Chia Wenlan shall answer or otherwise respond to the complaint within 20 days of the date of this order; and it is further

ORDERED that the portion of defendant's motion seeking to the dismiss the complaint is denied without prejudice as premature; and it is further

ORDERED that counsel are directed to appear for a preliminary conference at Part 43, Room 412, at 60 Centre Street, New York, New York on January 30, 2020 at 9:30 a.m.

This constitutes the Decision and Order of the court.

1/3/2020
DATE


ROBERT R. REED, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE