

Zara v Kiriscioglu

2020 NY Slip Op 32250(U)

July 9, 2020

Supreme Court, New York County

Docket Number: 656447/2018

Judge: Andrew Borrok

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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
NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

-----X

ROBERT ZARA

Plaintiff,

- v -

AYSE KIRISCIOGLU,

Defendant.

-----X

INDEX NO. 656447/2018
MOTION DATE 12/28/2018
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 50, 51, 52, 53, 54, 55, 56

were read on this motion to/for RENEWAL

Upon the foregoing documents, Robert M. Zara d/b/a Zara Law Offices' (Mr. Zara) motion for summary judgment in lieu of complaint pursuant to CPLR § 3213 and CPLR § 5014 to renew the judgment against Ayse Kiriscioglu, dated April 2, 2008, is granted.

The Relevant Facts and Circumstances

This action arises from Mr. Zara's former representation of Ms. Kiriscioglu in a matrimonial action, captioned Ayse Kiriscioglu v. Adnan Kiriscioglu, Index No. 05-03200 (the Matrimonial Action), which action was stayed pursuant to a decision and order, dated August 10, 2005, because Mr. Kiriscioglu had first filed a divorce action in Turkey (NYSCEF Doc. No. 33). Mr. Zara then attempted to file an application for counsel fees in or around 2007, which was denied because the Matrimonial Action was stayed (NYSCEF Doc. No. 35).

Mr. Zara subsequently commenced the action captioned, *Robert M. Zara d/b/a Zara Law Offices v. Ayse Kiriscioglu*, Index No. 604170/2007 (the **Fee Action**) to recover legal fees from Ms. Kiriscioglu. She was served with the Summons and Complaint by first class mail on December 20, 2007 and January 11, 2008 (NYSCEF Doc. No. 4), pursuant to her retainer agreement with Mr. Zara wherein she consented to service of process by first class mail (NYSCEF Doc. No. 20, ¶ 14). Ms. Kiriscioglu did not file an answer or any response in the Fee Action and as a result, Mr. Zara obtained a judgment, dated April 2, 2008, against Ms. Kiriscioglu in the sum of \$112,037.31 (NYSCEF Doc. No. 4, the **Judgment**).

On April 20, 2010, Ms. Kiriscioglu was served with subpoenas to produce certain documents and appear for deposition in the Fee Action (NYSCEF Doc. No. 6, the **Subpoenas**), which she failed to comply with. Thereafter, the court (Tanebaum J.), by order dated October 26, 2010, granted Mr. Zara's unopposed motion for contempt and ordered Ms. Kiriscioglu to comply with the Subpoenas (NYSCEF Doc. No. 7, the **Contempt Order**) and by order, dated July 12, 2011, granted Mr. Zara's unopposed motion for an order of commitment based on Ms. Kiriscioglu's failure to comply with the Contempt Order (NYSCEF Doc. No. 8). The order of commitment was not enforced because Ms. Kiriscioglu was not at her residence when officers attended the same.

On December 26, 2018, Mr. Zara commenced this action for summary judgment in lieu of complaint to renew the Judgment.

Discussion

Pursuant to CPLR § 3213, an action may be initiated upon any judgment and the plaintiff must demonstrate that there are no triable issues of fact, in accordance with the usual standard for summary judgment pursuant to CPLR § 3212. A prima facie showing of entitlement to a renewal judgment requires: (1) existence of the underlying judgment, (2) that the defendant was a judgment debtor, (3) that ten years have elapsed since the first docketing of the judgment, and (4) that the underlying judgment remains partially or wholly unsatisfied (*see* CPLR § 5104; *Lull v Van Tassell*, 171 AD3d 1155, 1156 [2d Dept 2019]). Once such a showing is made, the defendant must present admissible evidence that raises a triable issue of fact to preclude liability (*Zuckerman v New York*, 49 NY2d 557, 562 [1980]).

Mr. Zara argues that he is entitled to renew the Judgment because it was entered on August 10, 2005, the Judgment remains wholly unsatisfied, and more than ten years have elapsed from the first docketing of the Judgment.

To the extent that Mr. Zara also urges the court to disregard Ms. Kiriscioglu's affidavit in opposition because it was sworn by a New Jersey notary and unaccompanied by a certificate of conformity, the argument is unpersuasive. The absence of a certificate of conformity is a mere irregularity rather than a fatal defect and "[a]s long as the oath is duly given, authentication of the oath giver's authority can be secured later, and given nunc pro tunc effect if necessary" (CPLR § 2001; *Wager v Rao*, 178 AD3d 434, 435 [1st Dept 2019] [accepting plaintiffs' expert affidavit which was signed outside New York State but notarized by a New York notary, without providing a certificate of conformity], citing *Matapos Tech. Ltd. v Cia. Andina de Comercio*

Ltda, 68 AD3d 672, 673 [1st Dept 2009]). As a result, the court will consider Ms. Kiriscioglu's sworn affidavit.

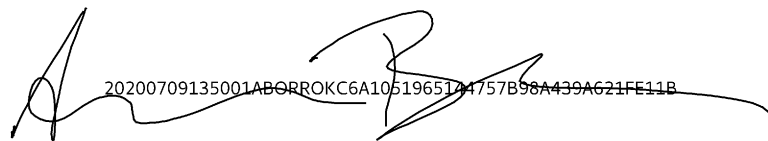
Notwithstanding the foregoing, Ms. Kiriscioglu fails to raise a triable issue of fact in opposition to the instant motion. Ms. Kiriscioglu argues that the motion to renew the Judgment should be denied because (i) she was not personally served with papers in the Fee Action, (ii) her husband had previously agreed with Mr. Zara to pay her legal fees, and (iii) there were papers from the Fee Action explaining why she had previously defaulted. These arguments are unavailing.

In her retainer agreement with Mr. Zara, Ms. Kiriscioglu agreed to service of process by first class mail and the Judgment indicates that the Summons and Complaint in the Fee Action was served twice by first class mail – i.e., first on December 20, 2007 and then on January 11, 2008 (NYSCEF Doc. No. 4).

Although Ms. Kiriscioglu also asserts that her husband agreed to pay her legal fees, and that he and Mr. Zara had reached some agreement that later fell through, Ms. Kiriscioglu does not explain why she has not responded in the Fee Action to date. In particular, Ms. Kiriscioglu proffers no explanation of why she took no action concerning the Judgment after she was served with the Subpoenas and Contempt Order (*see Lull*, 171 AD2d at 1157 [recognizing that process server's affidavit of service gives rise to a presumption of proper service and a mere conclusory denial of service is insufficient to rebut the same]).

Finally, Ms. Kiriscioglu attaches a draft affirmation from her former attorney in the Fee Action and her own draft affirmation, which papers appear to be in support of an unfiled motion to vacate her default in the Fee Action (NYSCEF Doc. Nos. 34, 36), but these papers are merely unsworn draft documents and Ms. Kiriscioglu did not make any cross-motion to vacate her prior default in the instant action.

Accordingly, Mr. Zara's motion for summary judgment to renew the Judgment is granted.



20200709135001ABORROK6A1051965104757B98A439A621FE11B

7/9/2020
DATE

ANDREW BORROK, J.S.C.

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