

**J. Alperin Co. Inc. v Khomari**

2020 NY Slip Op 33664(U)

October 22, 2020

Supreme Court, New York County

Docket Number: 156824/2019

Judge: Louis L. Nock

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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. LOUIS L. NOCK PART IAS MOTION 38EFM

Justice

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J. ALPERIN CO. INC.,

Plaintiff,

- v -

ROBERT KHOMARI D/B/A EVAN ROBERTS COMPANY,
JEROME HEIGHTS LLC, WOODY HEIGHTS LLC,
TIEBOUT HEIGHTS LLC, A&R DAVIDSON MGT LLC,
BELMONT PLACE LLC, HAVILAND 18 LLC,
VALENTINE HEIGHTS LLC, ASSOCIATES 26 LLC, A&R
UNITY MGT LLC, GREENSTONE 26 LLC, HARRISON
HILLS 55 LLC, CRESTON HILLS PLACE 26 LLC,
FORDHAM 26 LLC, GREYSTONE 18 LLC, LL SOLUTIONS
LLC, KUNBA LLC, WEBSTER 26 LLC, 1970 UNIVERSITY
LLC, FIFTH AVENUE HILLS LLC, WALLACE 18 LLC,
3RD AVENUE HEIGHTS LLC, S&L SILVER, LLC,
S & S SHAKESPEARE LLC, UNIVERSAL HEIGHTS 18
LLC, DOUBLE SALT LLC, 2304 AMSTERDAM LLC,
2108 AMSTERDAM LLC, FORTH INDEPENDENT AVE
LLC, 2407 BEAUMONT LLC, MACOMBS PLACE LLC,
PROSPECT PLACE 26 LLC, UNIVERSITY HEIGHTS 18
LLC, CONCOURSE HEIGHTS LLC, EAST 206
MANAGEMENT LLC, 1315 ST. NICHOLAS LLC, and 133 W
145 LLC,

Defendants.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 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, 58, 59, 60, 61, 62, 63,
64, 65, 66, 67, 68, 69, 70, 71, 74, 75, 76, 77, 78, 81, 82, 83

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, the motion of plaintiff J. Alperin Co., Inc. ("Plaintiff")
for entry of a default judgment against defendants Robert Khomari d/b/a Evan Roberts
Company, Jerome Heights LLC, Woody Heights LLC, Tiebout Heights LLC, A&R Davidson
Mgt LLC, Belmont Place LLC, Haviland 18 LLC, Valentine Heights LLC, Associates 26 LLC,
A&R Unity Mgt LLC, Greenstone 26 LLC, Harrison Hills 55 LLC, Creston Hills Place 26 LLC,
Fordham 26 LLC, Greystone 18 LLC, LL Solutions LLC, Kunba LLC, Webster 26 LLC, 1970

University LLC, Fifth Avenue Hills LLC, Wallace 18 LLC, 3RD Avenue Heights LLC, S&L Silver, LLC, S & S Shakespeare LLC, Universal Heights 18 LLC, Double Salt LLC, 2304 Amsterdam LLC, 2108 Amsterdam LLC, Forth Independent AVE LLC, 2407 Beaumont LLC, Macombs Place LLC, Prospect Place 26 LLC, University Heights 18 LLC, Concourse Heights LLC, East 206 Management LLC, 1315 St. Nicholas LLC, and 133 W 145 LLC (together, “Defendants”) is denied, and the cross-motion of Defendants to extend their time to answer the complaint is granted, in accord with the following memorandum decision.

Plaintiff commenced this action on July 11, 2019 to collect an alleged debt for work, labor and services, and for goods sold and delivered to Defendants. Affidavits of service filed by Plaintiff indicate that all Defendants were served with process between July 22, 2019 and August 8, 2019. When Defendants did not an answer in a timely manner, Plaintiff filed this motion for entry of a default judgment. Appearing by counsel, Defendants oppose the motion and cross-move for service of a late answer. The complaint alleges that individual defendant Robert Khomari (“Khomari”) requested the work, labor, services and goods at issue on behalf of the remaining defendant entities. In support of their opposition and cross-motion, Defendants submit an affidavit of Khomari in which he attests that he has an interest in the various entity defendants, and proffers a defense of payment, a dispute as to the goods and services provided, and a dispute of the debt as a defense. Khomari attests that Defendants are building owners and, “from time to time based on a *[sic]* customary purchase orders, material is ordered and sent to authorized third parties; ie. supers or agents to receive goods. The third-party signs to verify that the goods were delivered as per the purchase order and then I pay for such materials if delivered” (Khomari aff ¶ 9). He goes on to attest that, over time, a dispute arose regarding whether all goods were delivered and states that he requested verification of the account balances, which

proof of debt was not provided. As an excuse for the default in timely answering the complaint, Khomari states that he believed his prior counsel had answered the complaint and also asserts that said counsel suffered unidentified medical issues at or about the time of the default (*id.* ¶ 17). Khomari also states that he is a landlord owning multiple buildings in New York, and may have confused this matter with litigation in connection with these other properties, and that his confusion was increased because he was taking various medications due to a medical procedure he undertook near the time of the default (*id.* ¶ 18). When he determined that an answer had not been filed, he engaged new counsel who appeared and filed an answer on his behalf (*id.* ¶ 18).

New York public policy strongly favors disposing of cases on their merits, (*see Berardo v Guillet*, 86 AD3d 459, 459 [1st Dept 2011]), and “toward that end a liberal policy has been adopted with respect to opening default judgments in furtherance of justice so that parties may have their day in court” (*Mate Picinic v Seatrains Lines, Inc.*, 117 AD2d 504, 508 [1st Dept 1986]). “In order to successfully oppose a motion for a default judgment, a defendant must demonstrate a justifiable excuse for his default and a meritorious defense” (*New Media Holding Co. LLC v Kagalovsky*, 97 AD3d 463, 465 [1st Dept 2012]). Whether a reasonable excuse exists is a “discretionary, *sui generis* determination to be made by the court based on all relevant factors,” including, among other things, whether there has been prejudice to the opposing party, whether there has been willfulness, and the policy in favor of resolving cases on the merits (*id.* at 465). “Moreover, courts have the inherent power to forgive even an unexplained default in the interest of justice” (*id.* [quotations omitted]).

Under the circumstances presented here, the court finds that this is not an appropriate case for departure from this State’s preference for resolving controversies upon the merits, and the interests of justice warrant an exercise of discretion in favor of excusing the delay in

answering because the Kohmari affidavit sets forth a justifiable excuse for the default and a statement of meritorious defense. Furthermore, Defendants appeared in the action very shortly after Plaintiff's motion for a default judgment was filed, and Plaintiff will suffer no undue prejudice attributable to the delay.

Accordingly, it is

ORDERED that Plaintiff's motion for entry of a default judgment is denied, and Defendants' cross-motion for an extension of time to answer the complaint is granted; and it is further

ORDERED that the answer filed in this matter as NYSCEF Doc. No. 79 is hereby deemed served and filed, and procedurally valid; and it is further

ORDERED that counsel for the parties are directed to appear for a telephonic preliminary conference on November 18, 2020 at 3:00 p.m. Plaintiff is directed to arrange a conference call for the preliminary conference and circulate the dial-in information to all parties and the court at lfurdyna@nycourts.gov no later than 48 hours before the start of the conference.



<u>10/22/2020</u> DATE	<u>LOUIS L. NOCK, J.S.C.</u>			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
APPLICATION:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
CHECK IF APPROPRIATE:	<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE
		<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/> OTHER