Arch Specialty Ins. Co. v Corestone Constr. & Consulting LLC
2021 NY Slip Op 30211(U)
January 25, 2021
Supreme Court, New York County
Docket Number: 650717/2020
Judge: Arlene P. Bluth

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **IAS MOTION 14**

Justice

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ARCH SPECIALTY INSURANCE COMPANY

Plaintiff,

- v -

CORESTONE CONSTRUCTION AND CONSULTING LLC,

Defendant.

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INDEX NO. 650717/2020

MOTION DATE 01/12/2021

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

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

The motion to vacate the default judgment is denied.

Defendant moves to dismiss the default judgment entered against it. It's member, Mr. Uyar, explains that he parted ways with his partner in April 2017 and did not change the address of the defendant with the New York Secretary of State. He admits the company is winding down its work but it still exists. He also asserts that he disputed the claims by plaintiff concerning the premiums that are the subject of this action.

In opposition, plaintiff acknowledges that it had months of discussions with defendant's prior counsel about the unpaid premiums but insists that defendant's failure to update its address from April 2017 is not a sufficient basis to vacate the default judgment. Plaintiff also claims that because defendant's answer was due on March 5, 2020, the executive orders tolling the time to answer in light of the ongoing pandemic do not apply.

In reply, defendant points out that the CPLR 3215(g)(4) notice was sent to the wrong address (66 Islip Avenue instead of 660 Islip Avenue) and claims that he did not personally receive service pursuant to CPLR 317.

Discussion

"An application brought pursuant to CPLR 5015 to be relieved from a judgment or order entered on default requires a showing of a justifiable excuse and legal merit to the claim or defense asserted" (*Crespo v A.D.A. Mgt.*, 292 AD2d 5, 9, 739 NYS2d 49 [1st Dept 2002]). "The failure of a corporate defendant to receive service of process due to breach of the obligation to keep a current address on file with the Secretary of State does not constitute a reasonable excuse" (*id*. at 9-10).

Defendant is not entitled to relief under CPLR 5015 as its member admits the defendant has had the wrong address on file with the Secretary of State since 2017. It is not a reasonable excuse to fail to keep a current address and then claim a corporate defendant did not receive service.

Defendant also moves to vacate pursuant to CPLR 317. "That section states, in part, that [a] person served with a summons other than by personal delivery to him or to his agent for service under [CPLR] 318 may be allowed to defend the action within one year after he obtains knowledge of entry of the judgment upon a finding of the court that he did not personally receive notice of the summons in time to defend and has a meritorious defense. As has been emphasized in numerous cases, there is no necessity for a defendant moving pursuant to CPLR 317 to show a "reasonable excuse" for its delay. It is also well established that service on a corporation through delivery of process to the Secretary of State is not "personal delivery" to the corporation"

(*Eugene Di Lorenzo, Inc. v A.C. Dutton Lbr. Co., Inc.*, 67 NY2d 138, 141-42 [1986] [internal quotations and citations omitted]).

Defendant is also not entitled to relief under this statute because he has not stated a meritorious defense. Although Mr. Uyar's affidavit claims that he disputed the rates for certain employees, he also admits that he had his attorney offer $30,000 as the appropriate amount for the audit and believes the $60,000 demanded by plaintiff is not correct. But claiming a different amount is due is not the same as a meritorious defense to liability; in fact, it is an admission that defendant did not pay the premiums that plaintiff seeks.

It is also important to point out in this case that defendant had ample notice that plaintiff planned to file a litigation (NYSCEF Doc. No. 23 [emails from plaintiff's counsel about filing a case if the matter could not be settled]). And yet, defendant did not change its address with the Secretary of State and left an improper address on file for nearly three years while it was "winding down" its company. Now plaintiff brought a case, as it told defendant it would, and defendant wants to vacate a default judgment. Defendant does not contest liability (that it owes premiums); it only contests the amount of the premiums owed but does not offer anything of substance for that dispute. On the other hand, the docket contains plaintiff's audit report (NYSCEF Doc. No. 11) and invoice for the amount it seeks, and defendant has not challenged a single specific item.

Pursuant to CPLR 2001, the Court can overlook the mistake in the address for CPLR 3215(g) mailing as defendant has neither a reasonable excuse for its default nor a meritorious defense.

Accordingly, it is hereby

ORDERED that the motion by defendant to vacate the default judgment is denied.

1/25/2021
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED	X	DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE