

**Chris Grant Brohawk Films v Digital Seven, LLC**

2021 NY Slip Op 30955(U)

March 25, 2021

Supreme Court, New York County

Docket Number: 656790/2019

Judge: Arlene P. Bluth

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. ARLENE P. BLUTH PART IAS MOTION 14**

*Justice*

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**INDEX NO. 656790/2019**

CHRIS GRANT BROHAWK FILMS,  
Plaintiff,

**MOTION DATE 03/24/2021**

**MOTION SEQ. NO. 007**

- v -

DIGITAL SEVEN, LLC, BRENDAN COCHRANE  
Defendant.

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 77, 78, 79, 80, 81, 82, 83, 84, 88

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

The motion by defendant Cochrane (self-represented) to vacate this Court’s order is denied.

In this action, the Court previously granted a default judgment (NYSCEF Doc. No. 27). However, defendants moved to vacate on the ground that their attorney had faced significant personal issues, including attending to his sick wife, and was unaware of the motions filed by plaintiff. The Court granted this first motion to vacate (NYSCEF Doc. No. 59).

Next, plaintiff moved to renew the Court’s vacatur of the default judgment and insisted that the story provided by counsel for defendants was dubious at best. Plaintiff pointed out that counsel for defendants appeared for an oral argument in another case and filed a complaint in a third case all during the same time period when he completely ignored this case. The Court granted the motion and reinstated the default judgment, concluding that counsel for defendants left “the Court with the false impression that Mr. Hayes was unable to practice law when, in fact, he was working on multiple cases” (NYSCEF Doc. No. 74 at 3).

Now defendant Cochrane moves to vacate the Court's decision reinstating the default judgment. He claims that he personally witnessed his attorney become distracted because of Mr. Hayes' wife's illness. Mr. Cochrane takes issue with the merits of the case and disputes plaintiff's version of events surrounding the failed film that is the subject of this action. He claims that the money (the \$20,000 plaintiff gave to defendant) actually came from a grant and not from plaintiff.

Defendant Cochrane argues that this Court reversed its finding based on "a slick lawyer's attempt at slandering an attorney who was dealing with not only personal matter's [sic] but a working practice is not sound Jurisprudence" (NYSCEF Doc. No. 78, ¶ 12).

In opposition, plaintiff claims that defendant Cochrane cannot represent the corporate defendant. It also disputes Cochrane's attempt to relitigate the merits of the case and discounts Cochrane's affidavit as merely "self-serving." Plaintiff points out that Cochrane's attorney, when he moved to withdraw as counsel, stated that he did not intend to present any arguments concerning liability.

The Court denies the motion. As an initial matter, the Court observes that defendant Cochrane cannot represent the corporate defendant; only an attorney may do that. Moreover, the requested relief sought is unclear: the notice of motion seeks to vacate, but Cochrane's affidavit seeks to reargue and renew.

To the extent the motion is one to reargue, it is denied. If the Court were to construe the motion as one to renew, the motion is also denied because defendant Cochrane did not present any new facts not known at the time the Court considered plaintiff's motion to renew. Rather, Cochrane simply provides his view of his attorney's disposition—that is information that could have been presented in connection with the previous motion (MS 005).

The Court also denies the motion to the extent it seeks to vacate the default judgment. As the Court emphasized in its decision on Motion Sequence Number 005, counsel for defendants created the impression that he was unable to practice law and that is why he missed numerous emails and motions. That simply was not true.

While Cochrane emphasizes that counsel for defendants never specifically stated that he had ceased practicing law, that misses the point. An attorney has a duty to make truthful representations to the Court. Whether intentionally or unintentionally, counsel for defendants did not do that. If counsel for defendants was too busy (for whatever reason, including that his wife was sick) and forgot about this case, then he should have simply stated that. But he didn't. Instead, he provided extraordinary detail about the struggles of his wife and his own physical difficulties but never mentioned that he was actively litigating other cases. In fact, he mentioned "debilitating family and health issues that have consumed my personal life and my law practice" (NYSCEF Doc. No. 45, ¶ 7). The unmistakable message from counsel for defendants is that he was overwhelmed by his wife's illness. In reality, he was litigating other cases.

And the fact is that defendants did not merely miss a single email. According to counsel for defendants, he missed the motions from May 2020 through November 2020 (*id.* ¶ 11). That admission, when combined with the fact that counsel for defendants was litigating other cases, does not set forth a reasonable excuse for vacating a default. That defendant Cochrane witnessed some of his attorney's struggles does not compel the Court to overlook these circumstances.

Accordingly, it is hereby

ORDERED that the motion by self-represented defendant Cochrane to vacate, reargue and renew is denied.

Remote Inquest: May 17, 2020 at 10 a.m.

3/25/2021  
DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: