

Swift Fin., LLC v Nylon Intl. LLC
2021 NY Slip Op 32835(U)
December 20, 2021
Supreme Court, New York County
Docket Number: Index No. 655778/2020
Judge: Debra A. James
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA JAMES

PART 59

Justice

-----X

SWIFT FINANCIAL, LLC, as servicing agent for
WEBBANK,

Petitioner,

For an Order Confirming an Arbitration Award Pursuant to
CPLR § 7510 and a Judgment Pursuant to CPLR § 7514,

- v -

NYLON INTERNATIONAL LLC and WILLIAM MCGINLEY,

Respondents.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for

VACATE - JUDGMENT

ORDER

Upon the foregoing documents, it is

ORDERED and ADJUDGED that the judgment of default dated May 12, 2021, only as against Respondent Nylon International LLC, remains in full force and effect; and it is further

ORDERED that Respondent William John McGinley's motion to vacate the judgment of default dated May 12, 2021 against him, is granted, only to the extent that such default judgment is hereby vacated against the Respondent William John McGinley only, on condition that Respondent William John McGinley serve and file an Answer to the Petition herein (NYSCEF), within thirty (30) days

from service of a copy of this order with notice of entry; and it is further

ORDERED that Petitioner shall serve and file a Reply, if any, to the Answer, within fifteen (15) days from service of such Answer; and it is further

ORDERED that the Petition as against Respondent William John McGinley is severed and the balance of the proceeding against such respondent shall continue; and it is further

ORDERED that Petitioner shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

DECISION

CPLR 317 provides, in part:

"[a] person served with a [notice of petition] other than by personal delivery to him or to his agent for service under [CPLR] 318 *** may be allowed to defend the [proceeding] 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."

Here, the affidavit of service states that service of the notice of petition and petition upon individual defendant

William John McGinley was effectuated not by personal delivery to him, but by delivery to a person of "suitable age and discretion" on November 13, 2020. While Petitioner's process server states under oath that he delivered the process to such person of suitable age and discretion at the dwelling place of Respondent McGinley in Kew Gardens, New York, the request for judicial intervention filed by Petitioner on October 28, 2020 (Document Number 005) lists Respondent McGinley's address as on Christopher Street, Manhattan. Such discrepancy supports Respondent McGinley's statement under oath that he "never got" the service made at the Queens address, the only address at which Petitioner claims process was served. On that basis, the court finds that Respondent McGinley did not obtain knowledge of the judgment dated May 21, 2021 until after his time to defend had run, i.e., after expiration of Respondent's time to serve and file an answer or otherwise respond, which was on or about November 23, 2020.

As for a meritorious defense, respondent McGinley's statement that "I never got notice of the Arbitration itself that I think occurred in July 2020" is supported by the absence of any notice about the date and time of the arbitration hearing from the American Arbitration Association other than its Notice dated December 17, 2019, which states, in pertinent part, that "the hearing locale shall be Wilmington, DE." Lack of proper

notice is a ground for vacatur of an arbitration award. See AIG v Health Insurance Plan of Greater New York, 125 AD3d 555, 556 (1st Dept 2015). Therefore, Respondent McGinley states a meritorious defense.

Debra A. James

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12/20/2021
DATE

DEBRA JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE