

125 E. 50th St., Co. v Credo Intl., Inc.
2021 NY Slip Op 33639(U)
October 14, 2021
Civil Court of the City of New York, New York County
Docket Number: Index No. LT-302862-21/NY
Judge: Sabrina B. Kraus
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Civil Court of the City of New York
County of New York

Index # **LT-302862-21/NY**



125 East 50th Street, Co., Lessee, LLC
Petitioner(s)

-against-
Credo International, Inc.

Respondent(s)

Decision / Order

In this summary nonpayment proceeding, respondent has failed to appear. Petitioner moves for an order deeming the affidavit of service filed timely *nunc pro tunc*. Petitioner relies on a former version of New York City Court Act Section 411, which used to explicitly allow for said relief. That statutory provision is no longer in effect, and pursuant to the holding of the Appellate Division, First Department failure to timely file proof of service is a jurisdictional defect (*Riverside Syndicate, Inc. v Saltzman* 49 AD3d 402). While there are some courts that have ruled the late filing can be considered de minimis, under certain circumstances and in other departments [see eg *Siedlecki v. Doscher*, 33 Misc. 3d 18, 20 (App. Term 2011)], that is never the case where the relief sought, as here, is entry of a default judgment [*ZOT, Inc. v. Watson*, 20 Misc. 3d 1113(A) (Civ. Ct. 2008)].

Based on the foregoing the motion is denied.

This constitutes the decision and order of the court.

Date: October 14, 2021

SABRINA B. KRAUS
Judge, Civil Court

Hon. Sabrina B. Kraus
Judge of the Civil Court

CIVIL COURT OF THE
CITY OF NEW YORK

OCT 14 2021

ENTERED
NEW YORK COUNTY