

**Whitsons Food Serv. (Bronx) Corp. v Meglio 1 Corp.**

2021 NY Slip Op 33847(U)

March 30, 2021

Supreme Court, Suffolk County

Docket Number: Index No. 607427/2020

Judge: Martha L. Luft

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This opinion is uncorrected and not selected for official publication.

Short Form Order

Index No. 607427/2020

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 50 - COUNTY OF SUFFOLK

P R E S E N T:

Hon. Martha L. Luft  
Acting Justice Supreme Court

DECISION AND ORDER

\_\_\_\_\_  
WHITSONS FOOD SERVICE (BRONX)  
CORP,

Mot. Seq. No.: 001 - MD  
Orig. Return Date: 08/28/2020  
Mot. Submit Date: 09/08/2020

Plaintiff,

**PLAINTIFF'S ATTORNEYS**

-against-

Steven Elliot Cohen, Esq.  
Franklin Gringer & Cohen, PC  
666 Old Country Road, Suite 202  
Garden City, NY 11530

MEGLIO 1 CORP., MEGLIO GROUP  
INC., ALI KHANAT, and BARBARA  
KHANAT,

**DEFENDANTS' ATTORNEYS**

Defendants.

David Vincent Suarez, Esq.  
Law Offices of David V. Suarez, PLLC  
51 Wagon Wheel Court  
Dix Hills, NY 11746

Upon the e-filed documents numbered 18 through 38, it is

**ORDERED** that motion by the plaintiff Whitsons Food Service (Bronx) Corp. for an order granting it leave to enter a default judgment as to liability of the defendants Meglio 1 Corp., Meglio Group Inc., Ali Khanat, and Barbara Khanat is denied, and the defendants' answer is deemed timely served.

This is an action seeking to recover damages allegedly arising from breach of a sublease agreement and personal guaranty. The summons and complaint were filed with the Suffolk County Clerk on June 18, 2020. The defendants Meglio 1 Corp. and Meglio Group Inc. were served by delivery to the Secretary of State, pursuant to CPLR 311 (a) and Business Corporations Law § 306, on June 29, 2020. Affidavits of service also establish that delivery of the summons and complaint was personally made to attorney David Suarez on June 20, 2020 on behalf of

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Meglio 1 Corp. and Meglio Group Inc. A contractual provision in the personal guaranty provides that guarantors Meglio Group, Inc., Ali Khanat, and Barbara Khanat appointed Mr. Suarez as their agent for service of process, and Ali Khanat and Barbara Khanat were served by this method on June 20, 2020. On August 13, 2020, the plaintiff filed the instant motion seeking leave to enter a default judgment as against all defendants based upon their failure to answer or otherwise appear. The defendants' counsel filed an answer to the complaint on August 14, 2020, which the plaintiff's counsel rejected on the same date.

The plaintiff argues that it is entitled to an order granting it leave to enter a default judgment, as the defendants have failed to timely answer or to seek an extension of time to do so, and they have neither a reasonable excuse for their default nor a potentially meritorious defense to the action. The plaintiff submits proof of additional notice by mailing of the summons and complaint to all defendants on July 10, 2020, pursuant to CPLR 3215 (g)(3)(i) and (g)(4)(i) and an affidavit of merit by its Chief Financial Officer. In opposition, the defendants argue that the delay in answering was brief and that the answers are timely, as the time to answer was tolled by Governor Cuomo's Executive Orders arising from the Covid-19 health emergency.

Executive Order 202.8 was issued on March 20, 2020 tolling statutes of limitations and time limits for certain filings. Subsequent Executive Orders extended the toll. EO 202.67, issued on October 4, 2020, extended the toll through November 3, 2020. Plaintiff argues that Governor Cuomo's executive orders relate only to the commencement of new actions. The pertinent part of Executive Order 202.67 reads as follows:

The suspension in Executive Order 202.8, as modified and extended in subsequent Executive Orders, that tolled any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding as prescribed by the procedural laws of the state, including but not limited to the criminal procedure law, the family court act, the civil practice law and rules, the court of claims act, the surrogate's court procedure act, and the uniform court acts, or by any statute, local law, ordinance, order, rule, or regulation, or part thereof, is hereby continued, as modified by prior executive orders, provided however, for any civil case, such suspension is only effective until November 3, 2020, and after such date any such time limit will no longer be tolled,

Executive Order 202.67 tolls specific time limits for commencement, filing or service of any action, notice, motion, process or proceeding. Administrative Order 45-20 of the Administrative Judge of Suffolk County, issued on May 28, 2020, provided that no default judgments were to be granted, unless the application was heard prior to March 17, 2020 and proper notice was given. This directive was extended by subsequent Administrative Orders, with limited exceptions. On December 22, 2020, the issuance of Administrative Order 112-20 lifted the continuing restrictions on issuance of default judgments. These measures, viewed in conjunction with the overall context of the state of emergency in which the orders were issued, and considered with reflection upon the stated purpose of the portions of the Executive Orders relating to the courts, "...to limit court operations to essential matters during the pendency of the

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COVID-19 health crisis..." (Executive Order 202.8), lead the Court to the determination that the tolling provisions were intended to equally apply to interposition of answers in civil proceedings as to initial filings. Thus, the defendants' answer in this action is deemed timely served and the plaintiff's rejection of same is deemed a nullity.

According, the plaintiff's motion is denied.

Dated: March 30, 2021  
Riverhead, New York

  
HON. MARTHA L. LUFT, A.J.S.C.

Final Disposition

Non-Final Disposition