

Roosevelt Ave. Enters., LLC v Anflo Inc.

2022 NY Slip Op 30022(U)

January 2, 2022

Supreme Court, New York County

Docket Number: Index No. 650459/2020

Judge: Melissa A. Crane

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MELISSA CRANE PART 60M

Justice

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INDEX NO. 650459/2020

ROOSEVELT AVENUE ENTERPRISES, LLC,

MOTION DATE 11/16/2021

Plaintiff,

MOTION SEQ. NO. 004

- v -

ANFLO INC., ANGEL RUIZ, BRENDA FLORES

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 51, 52, 53, 54, 55 were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

On February 17, 2021, plaintiff moved, pursuant to CPLR 3215, for leave to enter a default judgment against individual defendants Angel Ruiz ("Ruiz") and Brenda Antonella Flores ("Flores") (NYSCEF Doc. Nos. 20-35).

On July 8, 2021, the court granted plaintiff's motion for default judgment as against defendants Ruiz and Flores and directed the clerk to enter judgment against them, jointly and severally, in the sum of \$339,135.88, with interest at the statutory rate of 9% per annum from August 15, 2019, together with costs and disbursements, as taxed by the clerk, upon the submission of an appropriate bill of costs (NYSCEF Doc. No. 36).

On July 14, 2021, plaintiff filed a Notice of Entry containing the July 8, 2021 dated decision and order granting a default judgment as against defendants Ruiz and Flores (NYSCEF Doc. No. 37, at 1-3). The attached affidavit of service indicated that plaintiff served, by mail, a copy of the decision and order on defendants Ruiz and Flores at 675 Seabury Avenue, Franklin

Square, NY 11010, and at 2611 96th Street, Apt. #1F, East Elmhurst, NY 11369, respectively.

(*id.* at 5).

On July 29, 2021, plaintiff filed a second Notice of Entry containing the judgment entered against defendants Ruiz and Flores on July 28, 2021 in the New York County Clerk's Office (NYSCEF Doc. No. 40 at 1-4). The attached affidavit of service also indicated that plaintiff had served, by mail, a copy of the judgment entered against defendant Ruiz and Flores at 675 Seabury Avenue, Franklin Square, NY 11010, and at 2611 96th Street, Apt. #1F, East Elmhurst, NY 11369, respectively (*id.* at 5).

On August 6, 2021, plaintiff served a subpoena upon defendant Flores compelling her to appear for a deposition on September 9, 2021 (NYSCEF Doc. Nos. 42, 46-47). On August 18, 2021, plaintiff served a subpoena upon defendant Ruiz compelling him to appear for a deposition on September 9, 2021 (NYSCEF Doc. Nos. 42, 44-45). To date, neither defendant has appeared for a deposition.

On October 27, 2021 plaintiff moved, by Order to Show Cause, and pursuant to CPLR 5251 and Judiciary Law 753 (A) (5) and 756, for an order declaring defendants Ruiz and Flores in contempt of court for failing and refusing to appear for a post-judgment deposition on September 9, 2021, and also for an order, pursuant to Judiciary Law 773, for legal fees and costs incurred in this case. The court granted plaintiff's motion to hold defendants Ruiz and Flores in contempt of court, without opposition, and denied the accompanying request for legal fees and costs incurred.

Defendant Ruiz now moves, by an Order to Show Cause, to vacate the prior judgments entered against himself and defendant Flores (NYSCEF Doc. No. 51). The court denies defendant Ruiz's Order to Show Cause in its entirety.

“It is well settled that a defendant seeking to vacate a default judgment entered upon its default...must demonstrate a reasonable excuse for the delay, as well as a meritorious defense to the action” (*Rodgers v 66 East Tremont Heights Housing Development Fund Corp.*, 69 AD3d 510, 510 [1st Dept 2010].)

Here, defendant Ruiz has failed to demonstrate a meritorious defense to this action. In his Order to Show Cause and affidavit in support, defendant Ruiz states that he would “like the court to vacate any orders/judgment entered against [him] and Brenda Antonella Flores...” and that he would like “the opportunity to explain [their] side.” (NYSCEF Doc. No. 51 at 1-2). To support his request, Defendant Ruiz contends that “[t]his is the first time [him] and Brenda have been in this situation...”, that “[they] sense that there has been foul play from the start on behalf of Roosevelt Avenue Enterprises”..., that “[t]he amount in judgment is an absurd [sic] amount as [their] business was sold by the plaintiffs to the buyers [he] and Brenda had agreed previously” and that “[m]ost of the months stayed were covered by the security held by the landlord.” (NYSCEF Doc. No. 51 at 3).

However, defendant Ruiz does not submit any evidence to support these contentions. He also fails to provide any additional details to rebut or otherwise oppose any of plaintiff’s claims as contained in its prior motion papers, such as proof of payments for the rent and additional rent that is sought in this case (NYSCEF Doc. No. 21). Based on the foregoing, the court finds that defendant Ruiz has failed to sufficiently demonstrate a meritorious defense in this case to support vacating the prior judgments against himself and defendant Flores.

Accordingly, it is

ORDERED that defendant Angel Ruiz's Order to Show Cause (Motion Sequence #004) is denied in its entirety.

1/2/22
DATE


MELISSA CRANE, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE		