

**Glore Jewelry Inc. v 47th St. & 6th Ave. Antique  
Jewelry Corner Inc.**

2022 NY Slip Op 30070(U)

January 4, 2022

Supreme Court, New York County

Docket Number: Index No. 652134/2018

Judge: Andrew Borrok

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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. ANDREW BORROK PART 53

Justice

-----X

GLORE JEWELRY INC., GLORE WATCHES INC.,

Plaintiff,

- v -

47TH STREET & 6TH AVENUE ANTIQUE JEWELRY CORNER INC., DBA 47TH STREET & 6TH AVENUE ANTIQUE JEWELRY, JASON KHODADADIAN, JANET KHODADADIAN,

Defendant.

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INDEX NO. 652134/2018

MOTION DATE 10/07/2021, 11/22/2021

MOTION SEQ. NO. 005 006

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 104, 105, 106, 120, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133

were read on this motion to/for CONTEMPT.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144

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

Upon the foregoing documents and for the reasons set forth on the record (1.4.22), Janet Khodadadian's motion to vacate the default judgment (Mt. Seq. No. 006) (the Prior Decision; NYSCEF Doc. No. 71) is granted because Plaintiffs failed to serve notice of the motion for default and the motion for default judgment in accordance with the CPLR and otherwise in the interest of justice (McMahon v New York, 105 AD2d 101, 106 [1st Dept 1984]). The contempt motion (Mt. Seq. No. 005) is denied as moot as against Ms. Khodadadian and denied as against Robert Khodadadian (Robert) for failure to demonstrate clear and convincing evidence of willful conduct to evade the court's order (El-Dehdan v El-Dehdan, 26 NY3d 19, 29 [2015]).

On the record before the court, it has not been established that Ms. Khodadadian had actual notice that the Plaintiffs were moving for default judgment as against her. At best the notice of motion was only sent by mail rather than served in accordance with the CPLR. It is unclear whether Ms. Khodadadian was served with the notice of motion of the default judgment and not just the summons and complaint. It is also unclear the extent to which the Defendants' prior attorney had contact with her. The Defendants' prior attorney was retained to represent both Ms. Khodadadian and her son, Jason Khodadadian (**Jason**). However, when the court granted the lawyer's motion to withdraw as counsel, citing a breakdown of communication, the lawyer's affidavit reveals the breakdown of communication was with Jason (NYSCEF Doc. No. 34) and did not indicate any communications or relationship with Ms. Khodadadian at all. What is clear is that Jason stone walled and did not communicate with either the court or their prior lawyer. Additionally, Ms. Khodadadian's affidavit suggests a meritorious defense, namely that she is not an officer of the business, she did not sign any of the checks at issue, and her involvement was only to visit her son (NYSCEF Doc. No. 109). Given the strong public policy in favor of hearing cases on the merits (*Arred Enterprises Corp. v Indemnity Ins. Co.*, 108 AD2d 624, 626 [1st Dept 1985]), the motion to vacate the default judgment against her only must be granted and the Plaintiffs shall serve an amended judgment on notice.

Plaintiffs' motion for contempt must be denied as moot as against Ms. Khodadadian and discovery must proceed. The Plaintiffs aver in the summons and complaint that the mother and son were both co-owners and co-conspirators in the fraud. They are permitted to test their theory and determine whether Ms. Khodadadian received money from her work performed for or in connection with 47th Street & 6th Avenue Antique Jewelry.

Plaintiffs' motion for contempt against non-party Robert Khodadadian (**Robert**) must be denied. Simply put, Robert has attended a deposition and the record does not support a finding of clear and convincing evidence that Robert frustrated the Plaintiffs' ability to obtain discovery or that they have been prejudiced in any way (*El-Dehdan v El-Dehdan*, 26 NY3d 19, 29 [2015]). Robert must comply with the subpoena duces tecum (NYSCEF Doc. No. 99) (*Matter of Kapon v Koch*, 23 NY3d 32, 38 [2014]; *see also* CPLR 3101[a][4]).

The court has considered the Plaintiffs' remaining arguments and finds them unavailing.

Accordingly, it is

ORDERED that Janet Khodadadian's motion to vacate the default judgment is granted; and it is further

ORDERED that the Plaintiffs are directed to serve an amended judgment on notice as against Jason Khodadadian; and it is further

ORDERED that Plaintiffs' motion to hold Robert Khodadadian in contempt is denied; and it is further

ORDERED that Plaintiffs' motion to hold Janet Khodadadian in contempt is denied; and it is further

ORDERED that Janet Khodadadian shall produce the documents demanded in the March 16, 2021 subpoena duces tecum (NYSCEF Doc. No. 97), by February 2, 2022; and it is further

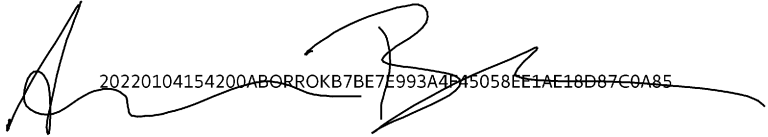
ORDERED that Robert Khodadadian shall produce the documents demanded in the March 16, 2021 subpoena duces tecum (NYSCEF Doc. No. 99), by February 2, 2022; and it is further

ORDERED that parties shall serve document demands on or before February 1, 2022; and it is further

ORDERED that parties will respond and produce documents, including affidavits sworn under penalty of perjury for the lack of any demanded documents, on or before February 23, 2022; and

it is further

ORDERED that parties shall appear for a remote status conference on February 28, 2022 at 11:30 AM.

  
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1/4/2022  
DATE

ANDREW BORROK, J.S.C.

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