

**Raymond Schwartzberg & Assoc., PLLC v  
Richardson**

2022 NY Slip Op 30442(U)

February 7, 2022

Supreme Court, New York County

Docket Number: Index No. 655290/2019

Judge: Arlene P. Bluth

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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. ARLENE BLUTH PART 14

*Justice*

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INDEX NO. 655290/2019

RAYMOND SCHWARTZBERG & ASSOCIATES,  
PLLC, RAYMOND SCHWARTZBERG,

MOTION DATE 02/04/2022

Plaintiffs,

MOTION SEQ. NO. 006

- v -

HAROLD RICHARDSON, JOANNY SANCHEZ, NESTOR  
ROSADO, P.C., NESTOR ROSADO, JAIME RAMIREZ, P.C.,  
JAIME RAMIREZ

**DECISION + ORDER ON  
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 175, 176, 177, 178,  
179, 180, 181, 182, 183, 184, 185, 186

were read on this motion to/for VACATE - DEFAULT.

The motion by defendant Richardson and the Ramirez defendants to vacate their defaults  
is denied.

In this action, plaintiffs previously obtained a default judgment against all three  
defendants and the Court ordered that there be an inquest against these defendants at the same  
time as the trial against the remaining defendants (NYSCEF Doc. Nos. 123, 156). Plaintiffs  
subsequently filed a note of issue (NYSCEF Doc. NO. 167).

Now, all three defendants move to vacate their default.

“To vacate a default, a party must demonstrate both a reasonable excuse and the  
existence of a meritorious defense” (*Terrapin Indus., LLC v Bank of New York*, 137 AD3d 569,  
570, 27 NYS3d 153 [1st Dept 2016]).

The Court denies the motion because none of the movants has stated a reasonable excuse for their default. Mr. Richardson does not deny receiving service of the instant action in his affidavit (NYSCEF Doc. No. 176). He also admits that he hired Mr. Schwartzberg to do work for him and states that “I won’t argue that he was entitled to nothing because his work was ineffective but he did not represent me all the way to the end of this matter and so he should not be entitled to his full twenty percent contingency” (*id.* ¶ 5). In other words, Mr. Richardson failed to raise both a reasonable excuse for his default or a meritorious defense. The Court emphasizes that it has not awarded any damages to plaintiff and so Mr. Richardson will be able to contest how much plaintiff might be due at the inquest/trial. But there is no reason, on these papers, to vacate the default against this defendant where he essentially admits liability and only contests damages.

Mr. Ramirez, on behalf of himself and his professional corporation, purports to offer an excuse for his default in his affidavit but this Court finds that excuse to be insufficient. He claims that on December 26, 2020, “an individual left an envelope at my office addressed to me that contained a copy of a summons and complaint. I opened the envelope and saw that the caption on the summons listed Mr. Schwartzberg and his firm as plaintiffs . . . It did thereafter name me also as a defendant however, I did not place close attention as I did not have any reason to believe that Mr. Schwartzberg would have any reason to bring an action against me” (NYSCEF Doc. No. 177, ¶ 10). Mr. Ramirez admits that he is an attorney but argues that he is not a litigator and simply missed his name.

The Court cannot vacate a default where the defendants (*an attorney and his law firm*) do not contest service, admit receiving a copy of the summons and complaint, admit reading those papers but conveniently forgets to see his own name in the caption - twice. It is simply not a

reasonable excuse; plaintiffs did what they were supposed to do. They served the papers and Mr. Ramirez admits that he got the papers. Just because he didn't read the papers does not mean the Court can find this to be a reasonable excuse.

Moreover, the Court observes that plaintiffs filed affidavits of service in connection with motion sequence numbers 003, 004 and 005, all of which claim the motion papers were mailed to Mr. Ramirez (NYSCEF Doc. Nos. 122, 146, 155) at the *same* address indicated in Mr. Ramirez's affidavit submitted on this motion. Mr. Ramirez's affidavit is silent about whether he received any of those papers, including motion sequence 005 (a successful motion for a default judgment against him). This Court declines to vacate a default judgment where the defendants not only admit receiving service of the summons and complaint but had motion papers mailed to them at their current address. Receiving motion papers seeking a default judgment against him should have disabused Mr. Ramirez of his misguided notion that he and his professional corporation had nothing to do with the instant matter.

And the Court observes that, as stated above, no damages have been awarded yet to plaintiffs and Mr. Ramirez and his law firm will have an opportunity to contest the damages at the inquest/trial.

Accordingly, it is hereby

ORDERED that the motion by defendants Richardson, Ramirez and Jamie Ramirez, P.C. to vacate their defaults is denied.

No future date is necessary as plaintiffs already filed a note of issue (NYSCEF Doc. No. 167).

2/7/2022  
DATE

  
ARLENE BLUTH, 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