

**Metro Global Group, Inc. v Queens Blvd 40th  
Owners Corp.**

2022 NY Slip Op 31720(U)

May 25, 2022

Supreme Court, New York County

Docket Number: Index No. 653165/2018

Judge: Louis L. Nock

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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**

<b>PRESENT:</b>	<u>HON. LOUIS L. NOCK</u>	<b>PART</b>	<b>38M</b>
	<i>Justice</i>		
	-----X	<b>INDEX NO.</b>	<u>653165/2018</u>
	METRO GLOBAL GROUP, INC., and RAMI YAZER,	<b>MOTION DATE</b>	<u>01/13/2022</u>
	Plaintiffs,	<b>MOTION SEQ. NO.</b>	<u>004</u>

- v -

QUEENS BLVD 40TH OWNERS CORP. D/B/A QUEENS  
BLVD 40TH ASSOCIATES, D/B/A SUNNYSIDE  
ASSOCIATES, SUNNYSIDE 40TH, LLC, and MODESTA  
MEDRANO,

**DECISION + ORDER ON  
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 004) 27, 28, 29, 30, 31, 32, 33, 34, and 35

were read on this motion to VACATE JUDGMENT.

Upon the foregoing documents, defendant Queens Blvd 40th Owners Corp.’s (“Owners Corp.”) motion to vacate the default judgment entered against it is granted, without opposition, based on the following memorandum decision.

Plaintiff Metro Global Group, Inc. (“Metro”) and its principal, plaintiff Rami Yazer, commenced this action for breach of contract, conversion, and unlawful eviction arising out of its tenancy of a commercial space located in Owners Corp.’s building located at 39-34 Queens Boulevard, Sunnyside, New York. On March 30, 2020, the Court granted plaintiffs’ motion for a default judgment on their cause of action for conversion, ordered a referee’s hearing to determine damages, ordered plaintiffs to begin coordinating with the Special Referee Clerk to set up the hearing within sixty days of the order, and otherwise denied the motion related to plaintiffs’ other claims. Since the Court issued its order plaintiffs have done nothing to commence coordinating the hearing, either within the sixty days set forth in the order or in the two years

since then. Owners Corp. now moves to vacate the default judgment entered against it on the grounds that the Court never acquired jurisdiction of it because plaintiff never served it. Moreover, for the same reason, Owners Corp. argues the complaint should be dismissed against it.

“The court which rendered a judgment or order may relieve a party from it upon such terms as may be just . . . upon the ground of . . . lack of jurisdiction to render the judgment or order” (CPLR 5015[a][4]). “Absent proper service, a default judgment may be vacated at any time, as it is void” (*Green 333 Corp. v RNL Life Science, Inc.*, 191 AD3d 506 [1st Dept 2021]). It is plaintiffs’ burden to establish compliance with the statutory service requirements (*id.*).

Here, plaintiffs assert service on defendant Sunnyside 40th, LLC (“Sunnyside”), formerly known as Queens Blvd 40th Associates (“Associates”) (NYSCEF Doc. No. 6), a d/b/a of Owners Corp., by service on the Secretary of State pursuant to Limited Liability Company Law § 303 (NYSCEF Doc. Nos. 2, 13). However, as established by Owners Corp., Associates is not a d/b/a of Owner’s Corp. but an entirely separate entity. Owners Corp. submits the master lease for the space plaintiffs rented, which is between Owners Corp. and Associates, and which allows Associates to sublet the space at its discretion (NYSCEF Doc. No. 29 at 1, 13, ¶ 40). Further, the lease for Metro’s predecessor, nonparty Joa Gift & Beauty Inc. (“Joa”) (NYSCEF Doc. No. 12, ¶¶ 5-8), is between Associates and Joa, not Owners Corp. (NYSCEF Doc. No. 30). Owners Corp. and Sunnyside have different registrations with the Department of State and have different addresses for service of process listed (NYSCEF Doc. Nos. 32-33). Accordingly, Owners Corp. asserts that it was never served and had no notice of the action until it appeared in a routine title search when one of Owners Corp.’s shareholders attempted to sell their cooperative unit (NYSCEF Doc. No. 28, ¶ 7). Because Owner’s Corp. was never served, the Court never acquired

personal jurisdiction over it, and the judgment must be vacated against it (*Green 333 Corp.*, 191 AD3d at 506). Further, for the same reason, the complaint must be dismissed against Owners Corp. (*Haberman v Simon*, 303 AD2d 181 [1st Dept 2003] [“If no such service was made, then the judgment would have to be vacated for lack of jurisdiction (CPLR 5015 [a] [4]), and the action dismissed”]).

Moreover, as regards this action generally, the Court notes that its prior order required plaintiffs to begin coordinating a damages hearing before the Special Referee Part within 60 days of the Court’s prior order of March 30, 2020. Two years following the expiration of that time, plaintiff does not appear to have taken any further steps to prosecute this action against defendant Sunnyside or defendant Modesta Medrano. Indeed, plaintiffs have never even served the complaint on Medrano in the first instance. Accordingly, the remaining parties in this action are directed to appear before the Court at a date and time set forth below, at which time plaintiffs will address why this action should not be dismissed as abandoned.

Accordingly, it is hereby

ORDERED that defendant Queens Blvd 40th Owners Corp.’s motion to vacate the default judgment herein is granted and the judgment against it is vacated; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment dismissing the complaint against defendant Queens Blvd 40th Owners Corp., with costs and disbursements to said defendant as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption, which shall read:

“-----X  
METRO GLOBAL GROUP, INC., and RAMI YAZER :  
  
Plaintiffs, :  
  
-against- :  
  
SUNNYSIDE 40<sup>th</sup>, LLC, and MODESTA MEDRANO, :  
  
Defendants. :  
-----X”;

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further,

ORDERED that counsel are directed to appear for a status conference as directed above, in Room 1166, 111 Centre Street, on July 7, 2022, at 10:00 AM, at which time plaintiffs shall address why this action should not be dismissed as abandoned.

This will constitute the decision and order of the court.

*Louis L. Nock*

<u>5/25/2022</u>			<u>LOUIS L. NOCK, J.S.C.</u>
DATE			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE