

<b>Signature Fin. LLC v Endeavor Constr. Group Corp.</b>
2022 NY Slip Op 32122(U)
July 5, 2022
Supreme Court, Kings County
Docket Number: Index No. 520718/2021
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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SIGNATURE FINANCIAL LLC,

Plaintiff,

Decision and order

- against -

Index No. 520718/2021

ENDEAVOR CONSTRUCTION GROUP CORP., and  
JUDA KLEIN

Defendants,

July 5, 2022

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PRESENT: HON. LEON RUCHELSMAN

The defendant Endeavor Construction Group Corp., moves pursuant to CPLR §317 and §5015 seeking to vacate a default judgement entered against them. The plaintiff opposes the motion. Papers were submitted by all parties and after reviewing the arguments of all parties this court now makes the following determination.

This lawsuit was commenced on August 13, 2021. The defendant Endeavor was served via the Secretary of State pursuant to Business Corporation Law §306. Further, on September 29, 2021 the summons and complaint were mailed to Endeavor's address located at 236 Broadway in Kings County pursuant to CPLR §3215(g)(3)(i). The defendant failed to answer and the plaintiff moved and obtained a default judgement on December 2, 2021. The defendant now moves seeking to vacate the default judgement on the grounds he was never validly served with process. The plaintiff opposes the request.

Conclusions of Law

A defendant may move to vacate a default judgement provided there is an excuse for the default and the defendant possesses a meritorious defense (CPLR §5015). In this case the motion to vacate is premised on lack of jurisdiction.

As noted, the defendant Endeavor Construction Group, a corporation, was served pursuant to New York Corporation Law §306 and the corporation was served at the address on file with the Secretary of State.

Service upon the Secretary of State is an authorized method of service (see, CPLR §311). Furthermore, pursuant to BCL §304 the Secretary of State is the agent of every domestic and authorized foreign corporation upon whom process may be served. Moreover, no corporation may be formed in New York State without the certificate of incorporation explicitly designating the Secretary of State to accept service on behalf of the corporation. Therefore, in Matter of Unsafe Building and Structure Number 1184-1194, 268 AD2d 309, 702 NYS2d 34 [1<sup>st</sup> Dept., 2000] the court held that "inasmuch as the owner of the subject premises is a corporation, jurisdiction over it was properly obtained by service upon the Secretary of State pursuant to Business Corporation Law §306(b)(1), which contains no diligent search requirement" (id). Thus, a corporation maintains a duty to keep its address current with the Secretary of State (Santiago v. Sansue Realty Corp., 243 AD2d 622, 663 NYS2d 235 [2d

Dept., 1997]).

In this case, the address on file with the secretary of state on August 13, 2021 was 32-65 45th Street, Astoria New York. The additional mailing of September 29, 2021 was effectuated at Endeavor's address known to the parties at 236 Broadway.

The defendant admits that the Astoria address was no longer the address, however, they "did not update its address with the New York Secretary of State" (see, Memorandum of Law in Support, page 3). Endeavor asserts the failure to update such address is a reasonable excuse sufficient to vacate a default.

There is really no dispute that the failure to update the address of the corporation with the secretary of state is a breach of responsibility and does not create a reasonable excuse for the failure to address the summons (FGB Realty Advisors Inc., v. Norm-Rick Realty Corp., 277 AD2d 439, 642 NYS2d 696 [2d Dept., 1996]). As the court explained in NYCTL 2013-A Trust v. Heights Houses Corp., 172 AD3d 1078, 98 NYS3d 460 [2d Dept., 2019] "the defendant's unexplained failure to update its address for service that is kept on file with the Secretary of State did not constitute a reasonable excuse" (*id.*). The defendant cites to cases which seem to excuse such failure to update the address with the secretary of state. However, upon a careful analysis these cases do not stand for that proposition. Thus, Stein v. A. Matarasso & Co., Inc., 143 AD2d 825, 533 NYS2d 126 [2d Dept 1988] cited by the defendant holds

that where the plaintiff was a former employee of the defendant and was aware of the correct address then the failure to update the address with the secretary of state would be grounds to deny relief to vacate any default. Again in H. K. A. Realty Co. v. United Steel and Strip Corp., 88 AD2d 612, 449 NYS2d 1017 [2d Dept 1982] the court excused the failure to notify the secretary of state of an address change where the plaintiff knew the correct address of the defendant. Those cases are exceptions to the general rule that the unexplained failure to notify the secretary of state does not provide the necessary excusable default.

This is further supported when considering the subsequent mailing sent on September 29, 2021. That mailing was sent to an address that was contained within the master security agreement, the promissory note and the consolidation agreement. Thus, while the bank statements submitted by Endeavor contain an address that is different, presumably nearby to the actual address served there is no evidence Endeavor's address was not 236 Broadway. The defendant argues that "as set forth in the May 23, 2022 Affidavit of David Ayzen, at all relevant times, ENDEAVOR's only places of business has been 232 Broadway, 3rd Floor, Brooklyn, New York 11211" (see, Memorandum of Law, page 2). However Mr. Ayzen, an officer of Endeavor does not state the correct address of Endeavor in his affidavit, rather he merely asserts the corporation never did business in Queens County. Therefore, service upon 236


Broadway, the address that is listed in all the documents in this case was proper. Consequently, the defendant has failed to allege any reasonable excuse for failing to answer the lawsuit.

Therefore, the motion seeking to vacate the default judgement is denied.

So ordered.

ENTER:

DATED: July 5, 2022  
Brooklyn N.Y.

  
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Hon. Leon Ruchelsman  
JSC