

Signature Fin., LLC v Endeavor Constr. Group Corp.
2022 NY Slip Op 33495(U)
September 23, 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, September 23, 2022

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PRESENT: HON. LEON RUCHELSMAN

The defendant Endeavor Construction Group Corp., moves pursuant to CPLR §2221 seeking to reargue a decision and order dated July 5, 2022. In the prior decision the court held the defendant could not vacate the default since they could not present a reasonable excuse for failing to appear since they had failed to update their address with the Secretary of State. The defendant seeks to reargue that determination. 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.

As recorded in the prior order, the defendant Endeavor was served via the Secretary of State pursuant to Business Corporation Law §306. Further, shortly thereafter 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 court denied the defendant's request seeking to vacate the default, as noted. The court held the failure to

update an address on file with the secretary of state is not a reasonable excuse to vacate a default. The defendant now moves seeking to reargue that determination.

Conclusions of Law

A motion to reargue must be based upon the fact the court overlooked or misapprehended fact or law or for some other reason mistakenly arrived at in its earlier decision (Deutsche Bank National Trust Co., v. Russo, 170 AD3d 952, 96 NYS2d 617 [2d Dept., 2019]).

The defendant does not present any cases challenging the prior determination that a reasonable excuse cannot be established where the defendant failed to keep its address current with the secretary of state. Rather, the defendant presents cases that held a reasonable excuse was found sufficient to vacate the default pursuant to CPLR §317. First, 6 Crannell Street LLC v. Urban Green Equities LLC, 207 AD3d 603, 170 NYS3d 476 [2d Dept., 2022] which held a reasonable excuse was presented did not deal with the secretary of state at all. The case cited by defendant Stillwell Café Inc., 1680 Eastchester Realty Corp., 145 AD3d 645, 42 NYS3d 804 [1st Dept., 2016] held that "defendant is not entitled to relief under CPLR 5015 (a). Defendant failed to demonstrate a reasonable excuse for its default...because there is no explanation as to what prevented defendant from updating its entity information with the

Secretary of State Defendant is not entitled to relief under CPLR 5015 (a)" (id). The court, however, did hold the default should be vacated pursuant to CPLR §317 based on the fact it presented evidence it did not receive actual notice of the summons and maintained a meritorious defense. However, it is well settled that generally a process server's affidavit provides prima facie evidence of proper service (US National Bank Association v. Melton, 90 AD3d 742, 934 NYS2d 352 [2d Dept., 2011]). To contend that service was improper or that no service took place the defendant must allege facts to support the contention (Genway Corp. v. Elgut, 177 AD2d 467, 575 NYS2d 899 [2d Dept., 1991], Rox River 83 Partners v. Ettlinger, 276 AD2d 782, 715 NYS2d 424 [2d Dept., 2000]). Conclusory denials are insufficient to entitle a defendant to a hearing concerning service (Deutsche Bank National Trust Company v. Hussain, 78 AD32d 989, 912 NYS2d 595 [2d Dept., 2010]). In Caba v. Rai, 63 AD3d 578, 882 NYS2d 56 [1st Dept., 2009] the court specifically held that merely asserting that "I was not served with a summons and verified complaint" is conclusory and insufficient to raise any issue of fact concerning service.


In this case the only evidence the defendant did not receive the summons and complaint is the affidavit of David Ayzen, a principle of Endeavor who states that Endeavor never received a copy of the summons and complaint (see, Affidavit of David Ayzen, ¶28 [NYSCEF Doc. #84]). However, as noted, such denial is conclusory and is

insufficient to vacate any default. Therefore, notwithstanding the more relaxed standards of CPLR §317, the defendant has still failed to present any reasonable excuse for failing to appear. Therefore, based on the foregoing the motion seeking reargument is denied.

So ordered.

ENTER:

DATED: September 23, 2022
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC