

**Albano v Meir Transp.**

2023 NY Slip Op 32728(U)

July 24, 2023

Supreme Court, Kings County

Docket Number: Index No. 515730/2019

Judge: Leon Ruchelsman

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

-----x  
PETER ALBANO, ANNA SHANDLER, ANNA'S  
LIMOUSINE SERVICE CORP. and ISABELL  
MARINE LLC,

Plaintiffs, Decision and order

- against -

Index No. 515730/2019

MEIR TRANSPORTATION, MILL BASIN LLC,  
WATER BASIN LLC, MANNY SHURKA, EFFIE SHURKA,  
and MOISHE SASSON a/k/a MOISHE SASON,

Defendants, July 24, 2023

-----x  
PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #2, #3, #4

The defendants have moved seeking to dismiss the complaint due to the plaintiff's failure to prosecute and also to dismiss the complaint due to plaintiff's failure seeking a default within a year. The plaintiff's have moved seeking a default against the corporate defendants Meir Transportation, Mill Basin LLC and Water Basin LLC. The motions have been opposed respectively. Papers were submitted by the parties and after reviewing all the arguments, this court now makes the following determination.

This action was commenced in October 2018. On September 11, 2019 this court ordered a Traverse hearing regarding defendants Manny Shukra, Effie Shukra and Moishe Sasson. The hearing was eventually scheduled for April 20, 2020, however, due to the courthouse closures in the wake of the COVID-19 pandemic the hearing never took place. The hearing was then scheduled for

February 22, 2021 but did not take place. On March 17, 2022 the judicial hearing officer emailed counsel for all parties indicating a hearing could be scheduled within the next few days. No hearing was ever scheduled. On June 23, 2022 the defendants served a 90 day notice to prosecute upon the plaintiffs. No action has been taken since. The defendants now seek to dismiss the action for the failure to prosecute. As noted that motion is opposed. Moreover, motions have been filed regarding the corporate defendants.

#### Conclusions of Law

It is well settled that when a plaintiff is served with a ninety day notice pursuant to §3216 then the plaintiff must comply with the notice or move to vacate the notice or seek an extension of time within ninety days (Walters v. Hoboken Wood Flooring Corp., 6 AD3d 696, 775 NYS2d 158 [2d Dept., 2004]). Where a plaintiff fails to comply with such ninety day notice then the plaintiff must demonstrate a reasonable excuse for such failure to respond to such notice as well as a meritorious cause of action (Gaydos v. Muhlbauer, 10 AD3d 408, 781 NYS2d 144 [2d Dept., 2004]).

In this case the plaintiffs have not presented any reasonable excuse at all. The plaintiffs assert they have been ready and willing to engage in any hearing about service of

process, however, the plaintiffs have failed to address the ninety day notice served and have failed to timely respond to the ninety day notice in any meaningful way. Assertions that discovery must be concluded before a note of issue can be filed does not present any reasonable excuse for failing to prosecute the action. Therefore, based on the foregoing, the motion seeking to dismiss the action as to the defendants Manny Shukra, Effie Shukra and Moishe Sasson is granted.

Concerning the corporate defendants, defendants argue that since the plaintiffs failed to file for a default within one year of when the answer was due, the action must be dismissed pursuant to CPLR §3215(c). It is well settled that where a plaintiff fails to seek leave to enter a default judgment within one year after the default he or she must offer a reasonable excuse for the delay and demonstrate that the complaint is meritorious (First Nationwide Bank v. Pretel, 240 AD2d 629, 659 NYS2d 291 [2d Dept., 1997]). In Pretel, the defendant defaulted on his mortgage, however, there was no prejudice by the delay and the existence of settlement discussions constituted a reasonable excuse, thus the court refused to dismiss the complaint as abandoned.

Once again, the plaintiffs have failed to present any evidence demonstrating any reasonable excuse why the default was

not taken within one year. Therefore, the motion seeking to dismiss the action against the corporate defendants is granted. The motion seeking a default is denied.

Thus, the action is dismissed against all defendants.

So ordered.

ENTER:



DATED: July 24, 2023  
Brooklyn N.Y.

---

Hon. Leon Ruchelsman  
JSC