

**Press v EPDJR NYC, LLC**

2023 NY Slip Op 33430(U)

October 4, 2023

Supreme Court, New York County

Docket Number: Index No. 151916/2019

Judge: William Franc Perry

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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. WILLIAM FRANC PERRY**

**PART**

*Justice*

-----X

DEBORAH PRESS,

Plaintiff,

- v -

EPDJR NYC, LLC D/B/A RPM PRESENTS, PARADOCS  
WORLDWIDE INC., FIRST RESPONSE AMBULANCE, INC.,

Defendant.

-----X

EPDJR NYC, LLC D/B/A RPM PRESENTS

Plaintiff,

-against-

AEGIS SECURITY & PATROL, INC.

Defendant.

-----X

**INDEX NO.** 151916/2019

**MOTION DATE** 08/26/2022

**MOTION SEQ. NO.** 004

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595331/2021

The following e-filed documents, listed by NYSCEF document number (Motion 004) 92, 93, 94, 95, 96, 106

were read on this motion to/for RENEWAL.

On August 12, 2022, third party plaintiff, EPDJR NYC, LLC d/b/a RPM PRESENTS (“EPDJR”), filed this CPLR § 2221(e) motion for leave to renew this Court’s February 16, 2022 decision. The motion to renew was transferred to me on April 24, 20223 by order of the Honorable Judge Schumacher before whom this matter is currently pending. Third-party defendant, AEGIS SECURITY & PATROL, INC. (“AEGIS”), has not entered an appearance or filed any responses in this matter, including an answer to the third-party complaint or any

opposition to the underlying motion for a default judgment or opposition to this CPLR § 2221(e) motion.

The Court's February 16, 2022 decision denied EPDJR's motion for a default judgment against AEGIS. The Court found that while EPDJR had effectuated service of its third-party complaint on AEGIS via the Office of the Secretary of State, it had not also shown that it had sent a copy of the Summons and Complaint by first class mail to AEGIS's last known address as required pursuant to CPLR §3215(g)(4)(i). In addition, the Court found proof of default lacking as it only consisted of the complaint verified by EPDJR's attorney and EPDJR did not produce any additional affidavit or other facts as proof in support of its motion for default.

A CPLR § 2221(e) motion must be based on new facts not included in the underlying motion that would have changed the prior determination and such motion. *See* CPLR § 2221(e). While a CPLR § 2221(e) motion to renew usually needs to be based on newly discovered material facts that were unknown to the moving party when it brought the underlying motion, trial courts have the discretion to grant leave to renew based upon facts that the moving party knew when it filed its underlying motion. *See J.D. Structures, Inc. v. Waldbaums*, 282 A.D.2d 434, 723 N.Y.S.2d 205 (2nd Dept 2001); *U.S. Reinsurance Corp. v. Humphreys*, 205 A.D.2d 187 at 192 (1st Dept. 1994); *Karlin v. Bridges*, 172 A.D.2d 644 (2nd Dept. 1991) (providing that “[t]he requirement that a motion for renewal be based upon newly discovered facts is a flexible one, and the court, in its discretion, may grant renewal upon facts known to the moving party at the time of the original motion.”); *Strong v. Brookhaven Memorial Hospital Medical Center*, 240 A.D.2d (2nd Dept. 1997)(stating that “[w]hile it is generally true that a motion to renew must be

based on newly-discovered facts, courts have discretion to grant this relief in the interest of justice, although not all the requirements for renewal are met.”).

Attached to its motion for leave to renew, EPDJR provides an affidavit of service dated July 7, 2022 showing that it served its third-party summons and complaint on AEGIS by substitute service via AEGIS’ registered agent at 7014 13th Avenue, Suite 202, Brooklyn, New York 11228, and by first class mail at AEGIS’ last known address. *See* NYSCEF Doc. No. at ¶ 35 and NYSCEF Doc. 94 (Exhibit A - Aff. of Service). This is in addition to EPDJR effectuating a re-service of its third-party summons and complaint on third-party defendant, AEGIS, via the Secretary of State on July 1, 2022. *See Id.* Prior service had only included service of the third-party summons and complaint on April 28, 2021 via the Office of the Secretary of State who had a duty is to transmit the same to AEGIS pursuant to Business Corporation Law §306. (NYSCEF Doc #73). EPDJR has also attached an affidavit of service dated August 12, 2022 showing it served AEGIS with the instant CPLR § 2221(e) motion for leave to renew in all three manners as well.


In addition, EPDJR has now submitted an affidavit in support of this motion from Edward Dean, President of EPDJR who has personal knowledge of the facts in this matter. This affidavit supports the facts in EPDJR’s third-party complaint and provides details of the facts and basis for third-party defendant AEGIS’s liability.

In light of the change in circumstances from the underlying default motion, the Court will exercise its discretion and grant EPDJR’s motion for leave to renew here. To date third-party defendant, AEGIS, has not made any appearance in this action. Accordingly, at no time has AEGIS requested an extension of time to appear or provided any excuse for its default. This is

despite the fact that AEGIS was put on notice of EPDJR’s prior motion on June 28, 2021 by the Secretary of State who’s statutorily obligated to transmit same to AEGIS. EDPJR has now re-served AEGIS by notice to the Secretary of State, provided service on AEGIS’s registered agent and by first class mail to AEGIS’s last known address. Despite such service of the third-party summons and complaint on June 5, 2022 and service of this motion on August 12, 2022, AEGIS has still not made any appearance in this matter.

Having granted leave to renew, this Court finds based on the third-party complaint and now the accompanying affidavit of Edward Dean, President of EPDJR and the additional affidavits of service that the plaintiff has shown what is required when requesting a default judgment. Specifically, this Court now has: 1) proof of service of the summons and complaint on AEGIS; 2) proof of the merits of EPDJR’s claims against AEGIS and 3) proof that AEGIS has not appeared in this matter or answered the allegations. *See SMROF II 2012-1 TR. V. Tella*, 139AD3d 599 [1st Dept. 2016] (listing the requirements on a motion to enter a default judgment, namely proof of service of summons and complaint, proof of the claims’ merits and proof of the defendant’s default).

Based on the foregoing, the Court now reverses its February 16, 2022 decision and grants EPDJR’s June 28, 2021 default motion against AEGIS. This constitutes the decision and order of this Court.

<u>10/04/2023</u> DATE	 WILLIAM FRANCO PERRY, J.S.C.			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE	
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