

**Northern Star Textile, Corp. v Micro Off. Solutions 4
LLC**

2023 NY Slip Op 33622(U)

October 16, 2023

Supreme Court, New York County

Docket Number: Index No. 156175/2020

Judge: Debra A. James

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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. DEBRA A. JAMES

PART 59

Justice

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NORTHERN STAR TEXTILE, CORP.,

Plaintiff,

- v -

MICRO OFFICE SOLUTIONS 4 LLC and WELLIE CHAO,

Defendants.

-----X

INDEX NO. 156175/2020

MOTION DATE 04/28/2022

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 98, 99, 100, 101, 102, 103, 104, 105, 106

were read on this motion to/for REARGUMENT/RECONSIDERATION.

ORDER

Upon the foregoing documents, it is

ORDERED that the motion pursuant to CPLR 2221(d) of defendant Micro Office Solutions 4 LLC to reargue the Corrected/Amended Decision and Order dated February 8, 2022, which granted the motion of plaintiff for a default judgment against such defendant and denied the cross motion of such defendant to vacate its default and compel plaintiff to accept its answer, is GRANTED; and it is further

ORDERED that, upon reargument, the Court adheres to its Corrected/Amended Decision and Order, dated February 8, 2022, which granted the motion of plaintiff for a default judgment against such defendant and denied the cross motion of such

defendant to vacate its default and to compel plaintiff to accept its answer; and it is further

ORDERED that the motion pursuant to CPLR 2221(e) of defendant Micro Office Solutions 4 LLC to renew the Corrected/Amended Decision and Order dated February 8, 2022, that granted the motion of plaintiff for a default judgment against it and denied its cross motion to vacate its default and compel plaintiff to accept its answer is DENIED.

DECISION

With respect to the motion pursuant to CPLR 2221(e)(2) of defendant Micro Office Solutions 4 LLC to renew the Corrected/Amended Decision and Order, dated February 8, 2022, which granted the motion of plaintiff for a default judgment against it and denied its cross motion to vacate its default and compel plaintiff to accept its answer, such defendant has not established that the additional material facts that it alleges constitutes a meritorious defense, i.e., the fire, existed at the time the prior motion was made, as required pursuant to CPLR 2221(e). In fact, moving defendant asserts that the fire took place on or about December 15, 2021, which was after the papers on the motion and cross motion were fully submitted on July 23, 2021.

As to the motion pursuant to CPLR 2221(d) of defendant Micro Office Solutions 4 LLC to reargue the Corrected/Amended

Decision and Order, dated February 8, 2022, which granted the motion of plaintiff for a default judgment against it and that denied its cross motion to vacate its default and to compel plaintiff to accept its late answer, upon reargument, this court would have rescinded such prior order, and issued a decision and order that denied plaintiff's motion for a default judgment and that granted the cross motion of defendant to vacate its default and to compel plaintiff to accept its answer, but for the order of the Appellate Division, First Department in Northern Star Textile Corp v Micro Office Solutions 4 LLC, 215 AD3d 426 (1st Dept 2023), which affirmed such prior order and is therefore law of the case. See Delagado v City of New York, 144 AD3d 46, 51 (1st Dept 2016). Were there no such decision on appeal, in the interest of justice and strong public policy, this court would have granted defendant the relief it sought, as the court overlooked controlling authority set forth in the following two opinions of the Appellate Division, First Department:

Nason v Fisher, 309 AD2d 526 (2003), where, in affirming the trial court's denial of the motion of plaintiff for a default judgment and grant of defendant's motion to compel plaintiff to accept its answer, the Appellate Division, First Department stated that

The motion court properly exercised its discretion in granting defendant's motion to compel plaintiff to accept service of [its] late answer since the delay in serving the

answer was relatively short and attributable to law office failure (see CPLR 3012[d]).

* * *

. . . technically there was no need for defendant[] to set forth a meritorious defense in support of [its] motion to compel acceptance of [its] answer, **since no default order or judgment had been obtained by plaintiff** (citation omitted and boldness added).

Gomez v Karyes Realty Corp, 211 AD3d 576 (2022), wherein the Appellate Division, First Department, reversed the trial court's denial of defendant's motion to vacate a default judgment against it, holding:

In opposition, plaintiff demonstrated that St. Andrews never updated its address with the Secretary of State, and thus could not show a reasonable excuse for its default under CPLR 5015(a)(1). However, no showing of a reasonable excuse is required under CPLR 317 (Eugene Di Lorenzo, Inc. v. A.C. Dutton Lbr. Co., 67 N.Y.2d 138, 141, 501 N.Y.S.2d 8, 492 N.E.2d 116 [1986]), and it cannot be inferred solely from the failure to update defendant's address with the Secretary of State that defendant was deliberately avoiding receiving notice (see Olivaria v. Lin & Son Realty Corp., 84 A.D.3d 423, 922 N.Y.S.2d 337 [1st Dept. 2011]). In light of the strong public policy favoring resolution of cases on their merits (see Berardo v. Guillet, 86 A.D.3d 459, 459, 926 N.Y.S.2d 521 [1st Dept. 2011]), we find that St. Andrews demonstrated entitlement to vacatur under CPLR 317.

Debra A. James

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<u>10/16/2023</u>			<u>DEBRA A. JAMES, J.S.C.</u>	
DATE				
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED		<input checked="" 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 checked="" type="checkbox"/> REFERENCE