

Port Auth. of N.Y. & N.J. v Diaz

2023 NY Slip Op 33730(U)

October 23, 2023

Supreme Court, New York County

Docket Number: Index No. 451197/2022

Judge: Arlene P. Bluth

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
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH **PART** **14**

Justice

-----X

PORT AUTHORITY OF NEW YORK & NEW JERSEY

Plaintiff,

- v -

FRANCISCA JIMINEZ DIAZ,

Defendant.

-----X

INDEX NO. 451197/2022

MOTION DATE 10/18/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 46, 47, 48

were read on this motion to/for DISCOVERY.

Defendant’s cross-motion to dismiss is granted.

Background

In this action about unpaid tolls, plaintiff previously obtained a judgment against defendant on default. Plaintiff now moves to compel compliance with a post-judgment information subpoena and defendant cross-moves to vacate her default and dismiss on the ground that she never incurred the tolls at issue.

Defendant claims that she never had an E-ZPass account with plaintiff nor did she have a credit card linked to such an account. She also insists that the only car she owned during the relevant time period was a Mercedes ML 350 with a Florida license plate and that this car was not listed in the vehicle citation detail submitted by plaintiff. Defendant also observes that four different E-ZPass accounts are listed on the vehicle citation report with five different cars. Plus, there are three different people included on this list (Francisco Rosario-Jimenez, Jimenez Francisca, Francisca Jimenez Diaz). Moreover, defendant claims that her name is Francisca

Jimenez Diaz whereas the defendant named in this case is Francisca Jimenez Diaz (with an “i” instead of a “e”). Defendant insists that she was never served with the summons and complaint and that she did not live at the New Jersey address when service was allegedly effectuated in 2022. She argues that she moved to Florida in 2005 from this New Jersey residence and then moved to New York City in 2019. Defendant includes her Florida driver’s license in connection with this motion.

In opposition to the cross-motion, plaintiff claims that defendant did not raise a reasonable excuse or a meritorious defense in support of her cross-motion. It characterizes defendant’s moving papers as self-serving and that a LexisNexis report generated for this defendant shows that service was proper. Plaintiff maintains that there is no basis to disturb the judgment. But plaintiff does not substantively address defendant’s claims.

Discussion

“As to vacating the default, a party seeking to vacate a default judgment must demonstrate both a reasonable excuse for the default and a meritorious defense” (*Aetna Life Ins. Co. v UTA of KJ Inc.*, 203 AD3d 401, 401, 160 NYS3d 590 (Mem) [1st Dept 2022]).

The Court grants the cross-motion and dismisses this case. Defendant met her burden in her cross-motion to vacate the judgment and to dismiss by pointing out the glaring inconsistencies in plaintiff’s supporting evidence and by denying that she has any connection to E-ZPass accounts at issue. A review of the vehicle citation report submitted by plaintiff in support of its default judgment motion shows that there were multiple E-ZPass devices, five cars, and at least three different individuals identified (NYSCEF Doc. No. 10). And as defendant correctly points out, there were four different account numbers.

For some reason, plaintiff did not attempt to clarify any of this confusing information in its opposition to defendant's cross-motion. Nor did plaintiff submit anything to combat defendant's assertion that she never had a E-ZPass account. Defendant wisely observed in her reply that plaintiff could have submitted its own records to show that defendant had an account with E-ZPass. These records might have included an application filled out and signed by defendant as well as a linked credit card account (or bank account). Nor did plaintiff include any proof of defendant's connection to the vehicles in question (such as documents showing the cars were registered in her name) or to the other individuals named in the vehicle citation report.

In other words, the instant motion is about burdens. Contrary to plaintiff's assertion that defendant's affidavit is self-serving, defendant met her burden by providing relevant details (such as specific information about the car she owned) and denying that she ever had an E-ZPass account. It is certainly difficult to "prove a negative"; here, that she never had an account. But plaintiff did not submit anything in opposition to even raise an issue of fact about defendant's connection to the unpaid tolls. The record shows that plaintiff attempted to collect unpaid tolls from different accounts, different cars and different people and plaintiff did not offer any explanation for how defendant could be held liable for all of the unpaid tolls. While a household could have multiple E-ZPass devices that are used by different cars, plaintiff did not make that argument and the Court cannot assume that is what happened.

The Court also observes that defendant raised a reasonable excuse for not answering the complaint because she had moved away from the New Jersey residence where service was allegedly effectuated on her grandson. Plaintiff's opposition even suggests it subsequently learned that she had moved to New York City as that is where it served subsequent mailings and

does not challenge defendant's assertion that she did not live at the New Jersey address where her grandson was served. In any event, cases should be decided on their merits.

The Court also observes that the fact that plaintiff may have misspelled defendant's name is not a dispositive point although plaintiff did not move to amend the caption despite defendant admitting that her name was incorrectly listed in the caption.

Summary


This Court has no interest in allowing individuals to avoid paying tolls. But the problem here is that, when challenged, plaintiff did not adequately connect defendant to the unpaid tolls. Defendant properly raised questions about the multiple individuals, accounts, devices, and cars included in this case and satisfied her burden to show she never had an E-ZPass account at all. Instead of responding to these specific claims with documents it surely possesses, plaintiff vaguely argued that defendant failed to raise a meritorious defense without submitting any evidence to show that defendant had an E-ZPass account or is liable for all or any of the charges at issue here.

Accordingly, it is hereby

ORDERED that defendant's cross-motion to vacate the judgment and to dismiss is granted and the judgment is hereby vacated and the complaint is dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly in favor of defendant and against plaintiff along with costs and disbursements upon presentation of proper papers therefor; and it is further

ORDERED that plaintiff's motion about a post-judgment information subpoena is denied as moot.

<u>10/23/2023</u> DATE	 ARLENE P. BLUTH, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input checked="" type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				<input type="checkbox"/> REFERENCE