

Red Target, LLC v Lane No. 1

2023 NY Slip Op 34771(U)

December 13, 2023

Supreme Court, Onondaga County

Docket Number: Index No. 002214/2022

Judge: Joseph E. Lamendola

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
SUPREME COURT ONONDAGA COUNTY

RED TARGET, LLC d/b/a SCJ COMMERCIAL
FINANCIAL SERVICES,

Plaintiff,

v.

LANE NO. 1, d/b/a ROUTE 11 CLUB, and
RICHARD L. SPOSATO aka RICHARD
SPOSATO,

Defendants.

DECISION AND ORDER

Motion # 2

Index No: 002214/2022

Before: Hon. Joseph E. Lamendola, JSC

On July 20, 2023, this Court issued a decision and order that granted plaintiff's motion for a default judgment. (NYSCEF #25). On August 1, 2023, Defendant Richard Sposato moved to vacate that order, as provided for in CPLR §5015(a)(1).

"Pursuant to CPLR 5015 (a) (1), a court may vacate a judgment or order entered upon default if it determines that there is a reasonable excuse for the default *and* a meritorious defense" (*Matter of Shehatou v Louka*, 145 AD3d 1533, 1534 [4th Dept 2016] [internal quotation marks omitted, *emphasis added*]). To establish a meritorious defense, the moving party is required "to set forth sufficient facts [or legal arguments] to demonstrate, on a prima facie basis, that a defense existed." (*Matter of Strumpf v Avery*, 134 AD3d 1465, 1466 [4th Dept 2015] [internal quotation marks omitted]). "[B]are assertion[s] . . . [of] a meritorious defense without stating the facts or legal arguments to establish that defense [are] insufficient" (*id.*). "The determination whether the moving party's excuse is reasonable lies within the sound discretion of the court" (*Vogt v Eberhardt*, 163 AD3d 1514, 1515 [4th Dept 2018]).

Here, Defendant Richard Sposato (hereinafter “Defendant”) failed to provide either a reasonable excuse for the default in appearing, or a meritorious defense exists.

Defendant sets forth in his supporting affidavit that he did not file an answer because:

Before commencement of [the present] court action, Defendant sent on October 7, 2021, a Debt Collector Disclosure Statement to an employee, named Tanya Baughnam, to which she never replied and a subsequent default notice sent to the same person on 5/16/22...therefore the debt was not verified by Plaintiff and as such, *Defendant felt he didn't have to answer the complaint.*

(Sposato Affidavit, pg. 1, paragraph 2.a, *emphasis added*)

The Court cannot accept this as a reasonable excuse for the default (*see e.g., Peroni v Peroni*, 189 AD3d 2058, 2060 [4th Dept 2020] Defendant’s mistaken in his belief that he can ward off a future lawsuit by unilaterally sending out a document of his own creation and bind a party when they do not respond. This belief, without any basis in law, is not a reasonable excuse for failing to file an answer. The summons and complaint herein comply with the mandates of the CPLR and New York State law, with the summons specifically advising Defendant that an answer must be served within 20 days of service (or 30 if not personally served) “and in case of your failure to appear or answer, Judgment will be taken against you by default for the relief demanded in the Complaint.” (NYSCEF #1)

There are a number of examples of the Court rejecting an excuse proffered in support of vacatur which support the Court’s determination herein. For example, the Fourth Department has held that the Defendant’s failure to consult legal counsel when he had sufficient time in which to do so does not establish a reasonable excuse for his default. *See also Peroni v. Peroni*, 189 AD3d 2058 [4th Dept., 2020] Likewise, in *Golf Glen Plaza Niles v Amcoid USA, LLC*, 160 AD3d 1375, 1376-1377 [4th Dept 2018] the

Court conclude[d] that defendant's assertion that he erroneously assumed that his wife's cousin and her attorney would respond to the complaint on his behalf does not constitute a reasonable excuse." It is not sufficient for a defendant to simply "believe" he did not need to file an answer.

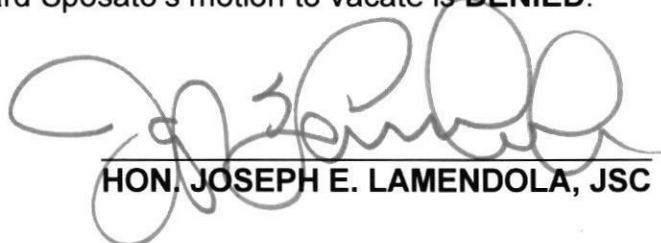
Because Defendant failed to demonstrate a reasonable excuse, the Court "need not consider whether [Defendant] established a potentially meritorious defense" in connection with a motion to vacate a default judgment. *Aetna Life Ins. Co. v. UTA of KI Inc.*, 203 AD3d 401, 402 [1st Dept., 2022]; see also *Citibank NA v. Sportswear Inc.*, 144 Ad3d 475, 476-7 [1st Dept., 2016] ("Absent a reasonable excuse [for default], vacatur is not appropriate regardless of whether defendant has a meritorious defense.")

Nevertheless, the Defendant has not made an adequate showing of a meritorious defense to justify vacatur of the default judgment either. Although a motion to vacate is addressed to the sound discretion of the Court, "bare assertion[s] . . . [of] a meritorious defense without stating the facts or legal arguments to establish that defense [are] insufficient." *Matter of Strumpf v Avery*, 134 AD3d 1465, 1466 [4th Dept 2015]

Accordingly, it is hereby

ORDERED, that Defendant Richard Sposato's motion to vacate is **DENIED**.

DATED: December 13, 2023
Syracuse, New York



HON. JOSEPH E. LAMENDOLA, JSC

PAPERS CONSIDERED:

1. Order to Show Cause, together with Affidavit in Support of OTSC, filed on August 1, 2023, (NYSCEF # 29/31)
2. Amended Order to Show Cause, filed September 12, 2023, (NYSCEF #33/35).
3. Affirmation in Opposition, with Exhibits A through C, filed October 30, 2023, (NYSCEF #37-40)