

Mitrovic v Trill Labs, Inc.

2024 NY Slip Op 34127(U)

November 19, 2024

Supreme Court, New York County

Docket Number: Index No. 655057/2022

Judge: Emily Morales-Minerva

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. EMILY MORALES-MINERVA PART 42M

Justice

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FILIP MITROVIC,

Plaintiff,

- v -

TRILL LABS, INC., RAHUL TIWARI

Defendant.

-----X

INDEX NO. 655057/2022
MOTION DATE 06/21/2024
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

APPEARANCES:

LBK Law Group, PLLC, Great Neck, New York (Lauren Blyer Kurland, Esq., of counsel) for plaintiff.

HON. EMILY MORALES-MINERVA:

In this breach of contract action, plaintiff FILIP MITROVIC moves, by notice of motion (sequence no. 002), to vacate the dismissal order in this action, dated April 16, 2024, and to restore the matter to the court's calendar. Defendants TRILL LABS, INC. and RAHUL TIWARI make no appearance nor file opposition.

For the reasons set forth below, the court grants the motion in its entirety.

BACKGROUND

On May 12, 2021, Filip Mitrovic (plaintiff) commenced an action in this court entitled Filip Mitrovic v Trill Labs, Index No. 653374/2021. Defendants Trill Labs Inc. and Rahul Tiwari (defendants) failed to appear, and plaintiff moved for leave to enter a default judgment against defendants (see NYSCEF Doc. No. 007, Notice of Motion, Index No. 653374/2021).

On June 1, 2021, the court (N. Bannon, J.S.C.) denied said motion without prejudice, reasoning, among other things, that plaintiff failed to submit proof of the facts constituting the claims (see Decision and Order, dated June 1, 2021, Index No. 653374/2021 [relying on CPLR § 3215 (f) (governing the proof on any application for default judgment)]). Plaintiff did not renew its application, taking no further action.

Thereafter, on October 17, 2022, the court (N. Bannon, J.S.C.) dismissed the complaint as more than five months had elapsed since the prior order, and more than one year elapsed since defendants' alleged default occurred (see Dismissal Order, dated October 17, 2022, Index No. 653374/2021 [citing CPLR 3215 (c) (providing that, "if the plaintiff fails to take proceedings for the entry of judgment within one year after the default, the court shall . . . dismiss the complaint as abandoned . . . upon its own initiative").

Plaintiff then moved for an order, vacating the order of dismissal, dated October 17, 2022. The court (N. Bannon, J.S.C.) deemed said motion as one seeking leave to reargue plaintiff's prior motion for a default judgment against defendants, which the same court denied on June 01, 2022 (see Filip Mitrovic v Trill Labs, Index No. 653374/2021, NYSCEF Doc. No. 024, decision and order, dated November 30, 2022]). Justice N. Bannon then denied the motion to reargue, reasoning both (1) that the motion to reargue was untimely as long past the 30 days of service with notice of entry and (2) that the court granted plaintiff renewal of said motion within 30 days from June 01, 2022, but plaintiff made no such effort.

Plaintiff took no further action in Filip Mitrovic v Trill Labs, Index No. 653374/2021.

However, on December 30, 2022, plaintiff commenced the instant action against defendants, filing the same complaint as the complaint filed in Index No. 653374/2021 (see NYSCEF Doc. No. 001, Complaint). Defendants again failed to appear, leading plaintiff to file a motion for leave to enter a default judgment (seq. no. 001), but only as against defendant Trill Labs Inc. (see NYSCEF Doc. No. 003, Notice of Motion).

The court (N. Bannon, J.S.C.) denied said motion (seq. no. 001) for the same reasons it denied the default motion in the identical Index No. 653374/2021 (see NYSCEF Doc. No. 010,

Decision and Order, dated February 7, 2024, p 1). The same court reasoned plaintiff's submissions merely contained the complaint with an affirmation of counsel in support of the motion. As counsel possesses no personal knowledge of the underlying facts alleged in the complaint, the affirmation had no probative value or evidentiary significance (id.).

Unlike in the previous denial of plaintiff's motion for a default judgment, the court (N. Bannon, J.S.C.) did not provide plaintiff with an opportunity to renew their application.

Thereafter, court administration transferred this matter to the present part due to a routine change in judicial assignments. The undersigned then scheduled a preliminary conference to be held on April 16, 2024 at 9:30 A.M.

At the call of the calendar, both parties failed to appear and both parties failed to contact the court with an excuse or request for an adjournment. Accordingly, the court dismissed the matter, pursuant to 22 NYCRR § 202.27 (see NYSCEF Doc. No. 11, Dismissal Order, dated April 16, 2024), marking the case disposed.

The record reflects no further contact from plaintiff, until June 21, 2024, when plaintiff filed the instant motion (seq. no. 002), for an order vacating the court's dismissal of this action. In support of their motion (seq. no. 002), plaintiff purports law office error as a reasonable excuse.

Plaintiff contends that they e-mailed the court to explain such error on the date of their default, submitting, with this motion, a copy of correspondence, dated April 16, 2024, on the letter head of LBK LAW GROUP, PLLC with the notation "via email [to] SCF-Part42-Clerk@nycourts.gov." However, no such e-mail exists in the court system.

Plaintiff further contends that the following day, on April 17, 2024, they sent the same letter "via e-mail [to] SFC-Part42-Clerk@nycourts.gov which is the appropriate court e-mail. However, no record or e-mail of such sort exists anywhere in said e-mail's electronic mailbox. Further, plaintiff did not follow up, confirm receipt, or provide a confirmation of the date and time of the e-mails.

On June 21, 2024, for the first time, plaintiff provided the court with the above-described letters, dated April 16, 2024 and April 17, 2024 (see NYSCEF Doc. No. 13, Plaintiff's Affirmation at 2, exhibit's A and B, Letters to the Court). The affirmation of plaintiff's counsel in support of this motion, dated June 21, 2024, and the supplemental affirmation of plaintiff's counsel, dated July 17, 2024, provide only that the letters "w[ere] sent to this Court" (see id. at 2, see NYSCEF Doc. No. 19, Plaintiff's Supplemental Affirmation).

ANALYSIS

"At any scheduled call of a calendar or at any conference, if all parties do not appear and proceed or announce their readiness to proceed immediately, the judge may note the default on the record and enter an order . . . as appears just" including dismissing the cause of action (Uniform Civil Rules for the Supreme Court and the County Court [22 NYCRR § 202.27(c)]).

To establish excusable default, plaintiff must establish (1) a reasonable excuse for the default; and (2) a meritorious defense to the action (see SOS Cap. v Recycling Paper Partners of PA, LLC, 220 AD3d 25, 38 [1st Dept 2023], citing Johnson-Roberts v Ira Judelson Bail Bonds, 140 AD3d 509, 509 [1st Dept 2016]; Eugene Di Lorenzo, Inc. v A.C. Dutton Lbr. Co., 67 NY2d 138, 141 [1986]).

Generally, law office failure may amount to a reasonable excuse for a failure to appear (see Park v Kim, 205 AD3d 429, 429-430 [1st Dept 2022]; see also CPLR 5015 [a] [governing relief from judgment or order based on excusable default]; CPLR § 2005 [governing excusable delay resulting from, among other things, "law office failure"]).

Here, plaintiff fails to establish a reasonable excuse for the default, offering conclusory statements that conflict with

the electronic court file in this action (compare Cooper v Broems, 214 AD3d 497 [1st Dept 2023] [holding that plaintiff presented a reasonable excuse of law office failure in the form of an affirmation of counsel, along with a copy of counsel's electronic calendar, showing that their office had inadvertently failed to calendar the court date] [emphasis added])).

However, in the interest of justice, this court exercises its discretion to restore the matter to the calendar as plaintiff meets the minimum standard of proof for a meritorious cause of action and no apparent prejudice exists to defendants, who have not appeared in this action (see Ronsco Const. Co., Inc. 219 AD2d 281 [1st Dept 1996] [providing that, although plaintiff failed to demonstrate a "reasonable excuse," consideration of a meritorious cause of action and absence of substantial prejudice militated in favor of restoration of the matter]; see also Zoom Tan, Inc. v Monforte, 227 AD3d 1237 [3d Dept 2024] [providing "the quantum of proof required to prevail on a motion to vacate a default order or judgment is not as great as is required to oppose summary judgment" and is a "minimal standard of proof"])).

Accordingly, it is,

ORDERED plaintiff FILIP MITROVIC's motion (seq. no. 002) to vacate this court's decision and order, dated April 16, 2024, dismissing this action is GRANTED; and it is further

ORDERED that the clerk of the court restore this matter to the calendar.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

11/19/2024
DATE

Emily Morales-Minerva
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE