

**Tarrats v Kurian**

2024 NY Slip Op 34955(U)

January 3, 2024

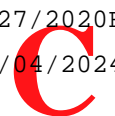
Supreme Court, Bronx County

Docket Number: Index No. 23427/2020E

Judge: Bianka Perez

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX, PART 14**

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REINALDO TARRATS JR.,

Index No. 23427/2020E

Plaintiff(s),

-against-

**Hon. Bianka Perez**

Justice Supreme Court

STEPHIN KURIAN, IBI ARMORED SERVICES,  
INC. and IANA LEASING INC.,

Defendants.

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The following papers were read on this motion (**Seq No. 2**) to VACATE submitted on **August 21, 2023**.

Notice of Motion - Exhibits and Affidavits Annexed	Nyscef No(s). 33-35
Answering Affidavit and Exhibits	Nyscef No(s). 37-38
Reply Affidavit and Exhibits	Nyscef No(s). 39

Upon the foregoing papers, plaintiff moves, pursuant to CPLR 5015, to 1) vacate this Court’s Decision and Order dated December 20, 2022, and 2) restore the above matter to the calendar for a decision on the merits of defendants’ motion for summary judgment. Defendants oppose.

Plaintiff commenced this action to recover damages for personal injuries he allegedly sustained as a result of a motor vehicle accident that occurred on April 4, 2019, at the intersection of Watson Avenue and Beach Avenue in the Bronx, State New York.

On December 20, 2022, this Court granted, without opposition, defendants’ motion for summary judgment seeking to dismiss plaintiff’s Complaint. The Order with Notice of its Entry was served on January 11, 2023, and electronically served via NYSCEF.

Plaintiff argues that this Court’s Decision and Order should be vacated pursuant to CPLR 5015 and pursuant to this Court’s inherent discretionary powers because plaintiff has a reasonable excuse for his failure to oppose defendants’ motion and has a meritorious claim. A court, in its discretion, may vacate a judgment on the ground of a party’s “excusable default” (CPLR 5015 [a] [1]). To prevail on a motion to vacate a default judgment on this ground, a party must demonstrate a reasonable excuse for the default and a potentially meritorious defense (see *Chowdhury v*

*Weldon*, 185 AD3d 649, 649 [2d Dept 2020]; *Jian Hua Tan v AB Capstone Dev., LLC*, 163 AD3d 937, 937-938 [2d Dept 2018]; *Ashley v Ashley*, 139 AD3d 650, 651 [2d Dept 2016]; *Lambert v Schreiber*, 69 AD3d 904, 905 [2d Dept 2010]). The motion must be made within one year after service of the judgment, with notice of entry, upon the moving party (see CPLR 5015 [a] [1]; *Ashley*, 139 AD3d at 651)), “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” (*Clark v MGM Textiles Indus*, 307 AD2d 520, 521 [3d Dept 2003]).

“The determination of what constitutes a reasonable excuse generally lies within the sound discretion of the trial court” (*Jian Hua Tan*, 163 AD3d at 938; *Herrera v MTA Bus Co.*, 100 AD3d 962, 963 [2d Dept 2012]). “At the same time, mere neglect is not a reasonable excuse” (*Chowdhury*, 185 AD3d at 649 [internal quotation marks omitted]; *One West Bank, FSB v Singer*, 153 AD3d 714, 716 [2d Dept. 2017]). Further, conclusory and non-specific allegations do not suffice (see *OneWest Bank*, 153 AD3d at 716). A court may exercise its discretion in the interest of justice to excuse delay or default resulting from law office failure upon an application that satisfies the requirements of CPLR 5015 (a) (see CPLR 2005). The Second Department has upheld a trial court's exercise of discretion in vacating a default resulting from law office failure of a party's prior counsel (see *Sarcona v J & J Air Container Sta., Inc.*, 111 AD3d 914, 915 [2d Dept 2013]; *Muir v Coleman*, 98 AD3d 569, 570 [2d Dept 2012]; *Gironda v Katzen*, 19 AD3d 644, 645 [2005]). Excusing defaults resulting from law office failure supports the “strong public policy of resolving controversies on the merits” (*Franco Belli Plumbing and Heating and Sons, Inc. v Imperial Development & Const. Corp.*, 45 AD3d 634, 637 [2d Dept 2007]; see also *Cornwall Warehousing, Inc. v Lerner*, 171 AD3d 540, [1st Dept 2019]).

As to the first prong, plaintiff argues that the default was caused as a result of law office failure, after plaintiff's former counsel, Matthew Duco, who was handling this matter, left the firm in November 2022 and failed to submit timely opposition to the motion before his departure.

In support of the motion, plaintiff refers to plaintiff's deposition transcript, the police accident report and annexes a copy of a police report overlay.

Here, contrary to defendants' argument, the Court finds that plaintiff's explanation constitutes a reasonable excuse for its default, which was caused as a result of law office failure, after plaintiff's former counsel, Matthew Duco, who was charged with handling this matter prior to his departure from the plaintiff firm, failed to submit timely opposition to the motion (see

*Diamond v Leone*, 173 AD3d 686, 687 [2d Dept 2019]; *Sarcona*, 111 AD3d at 915; *Muir*, 98 AD3d at 570; *Gironda*, 19 AD3d at 645).

As to the second prong of the analysis, plaintiff relies on his testimony to support his contention that he has a potentially meritorious cause of action and opposition to the motion given that plaintiff's vehicle was struck by the defendant vehicle.

Consequently, plaintiff has presented both a reasonable excuse for his default and a potentially meritorious defense to the motion for summary judgment in order to vacate this Court's prior Decision and Order dated December 20, 2022. Thus, the Court's prior decision is vacated and the return date of motion sequence #1 is adjourned to January 26, 2024 to allow plaintiff to submit opposition.

Accordingly, it is hereby

**ORDERED**, that plaintiff's motion, to vacate this Court's prior Decision and Order dated December 20, 2022, is hereby granted, and it is further

**ORDERED**, that the Clerk of the Court is directed to vacate this Court's prior Decision and Order dated December 20, 2022, and it is further

**ORDERED**, that the Clerk of the Court is directed to reinstate the Complaint and restore this matter to the active calendar, and it is further

**ORDERED**, that the return date of defendants' motion under motion sequence #1 is hereby adjourned to January 26, 2024, to allow plaintiff to submit opposition to defendants' motion.

This constitutes the decision and order of the court.

**Dated: January 3, 2024**

Hon. \_\_\_\_\_



**BIANKA PEREZ, J.S.C.**

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- 1. CHECK ONE.....  CASE DISPOSED IN ITS ENTIRETY     CASE RESTORED ACTIVE
  - 2. MOTION IS.....  GRANTED     DENIED     GRANTED IN PART     OTHER
  - 3. CHECK IF APPROPRIATE.....  SETTLE ORDER     SUBMIT ORDER     SCHEDULE APPEARANCE
  - FIDUCIARY APPOINTMENT     REFEREE APPOINTMENT