

**Brown v Register**

2024 NY Slip Op 35018(U)

November 15, 2024

Supreme Court, Richmond County

Docket Number: Index No. 151498/2021

Judge: Paul Marrone, Jr.

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND  
IAS PART 3M**

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**LINDA LEILANI BROWN,**

**Plaintiff,**

**Hon. Paul Marrone, Jr.**

**DECISION AND ORDER**

**-against-**

**Index No. 151498/2021**

**JEFFREY REGISTER, a/k/a GANO GRILLS, and  
GALIGHTICUS, INC.**

**Motion No. 006, 007, 008, 009**

**Defendants.**

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The following documents identified below by their e-filing designations were marked “fully submitted” on May 2, 2024:

	E-FILING
Notice of Motion (006) seeking a default judgment and leave to file a Note of Issue for Inquest (Dated December 17, 2023) .....	154
Affirmation of Clifford S. Nelson, Esq. in support of motion (Dated December 17, 2023) .....	155
Affidavit of Linda Leilani Brown in support of motion with Exhibits annexed (Dated December 16, 2023) .....	156 - 158
Notice of Cross-Motion seeking dismissal (007), and n Opposition to Motion (Dated January 17, 2024) .....	161
Memorandum of Law In Opposition to Motion and in Support of Cross-Motion by Special Hagan, Esq. (Dated January 17, 2024) .....	162
Affirmation of Special Hagan, Esq. in support of Cross-Motion and in opposition to motion with Exhibits annexed (Dated January 17, 2024) .....	164-174
Affirmation of Clifford S. Nelson, Esq., in opposition to the Cross-Motion and in Reply	

(Dated January 18, 2024) ..... 175

Affirmation of Special Hagan, Esq., in reply and further support of Cross-Moion with Exhibits annexed (Dated February 14, 2024) ..... 177-179

Notice of Motion (008) seeking a default judgment and reinstating motion sequence 6 held in abeyance (Dated April 9, 2024) ..... 184

Affirmation of Clifford S. Nelson, Esq. in support of motion (Dated April 9, 2024) ..... 185

Notice of Cross-Motion (009) seeking dismissal and reinstating motion sequence 7 held in abeyance (Dated April 25, 2024) ..... 189

Affirmation of Special Hagan, Esq. in support of cross-motion and Exhibits annexed (Dated April 25, 2024) ..... 190-195

Affirmation of Clifford S. Nelson, Esq. in opposition to Cross-Motion and in Reply (Dated April 26, 2024) ..... 197

Affirmation of Special Hagan, Esq. in further support of Cross-Motion with Exhibits annexed (Dated May 2, 2024) ..... 198-199

The Court grants Plaintiff’s motion (006 and 008) seeking a default judgment and leave to file a note of issue to proceed with inquest, and denies Defendants’ cross-motion (007 and 009) seeking dismissal of the second amended complaint.

**PROCEDURAL HISTORY AND FACTS**

Linda Leilani Brown (hereinafter “Plaintiff”), commenced this action against, Jeffrey Register, a/k/a Gano Grills, and Galighticus, Inc. (hereinafter “Defendants”) by filing a complaint on August 6, 2021. The complaint alleged several causes of action including defamation, the New York City “revenge porn” law (NYC Admin Code § 10-180), and breach of contract. Plaintiff

completed service on Defendants by substituted service on Cynthia Mora on October 14, 2021, and by serving the New York State Department of State on November 10, 2021. Prior counsel answered the complaint on January 18, 2022 asserting several affirmative defenses, but did not object to the court's personal jurisdiction over Defendants. Plaintiff then filed a verified Amended Complaint as of right on January 31, 2022. Defendants never answered the amended complaint. Current defense counsel substituted prior defense counsel by filing a Notice of Appearance (post-RJI) on October 13, 2022 nearly nine months after the service of an amended verified complaint.

Current counsel for the defendants moved to dismiss Plaintiff's Verified Amended Complaint on April 17, 2023 approximately six months after substituting as counsel to Defendants. This Court denied the motion to dismiss in its entirety and specifically found that Defendants' failed to preserve its grounds for dismissal based on lack of personal jurisdiction holding that Defendants did not preserve this defense in the original answer citing CPLR 3211[a][8] and *GMAC Mtg., LLC v. Coomb*, 191 AD3d 37, 40 [2d Dept. 2020].

Plaintiff cross-moved seeking leave to further amend the complaint to assert two additional causes of action. The same order denying Defendants' motion to dismiss granted Plaintiff's cross-motion to the extent that Plaintiff's could partially amend the complaint to add a new cause of action.

Plaintiff filed a verified second amended complaint on October 11, 2023 and this Court declined to sign an order to show cause (005) seeking, *inter alia*, to stay Defendants' time to answer pending an appeal on December 13, 2023.

Plaintiff then moved for a default judgment on the second amended complaint on December 17, 2023 (006), and Defendants cross-moved seeking dismissal (007). This Court issued an order directing a traverse hearing to determine personal service and held the motion and cross-

motion in abeyance pending a hearing before a court attorney referee. After a conference and series of e-mails this Court vacated the order directing a hearing and now will decide substance of the motions argued in motions sequenced 006, 007, 008, and 009<sup>1</sup>.

### DISCUSSION

Defendants' cross-motion and opposition to Plaintiff's motion seeking a default judgment on the second amended complaint repurposes arguments challenging personal jurisdiction as novel subject matter jurisdiction challenges. These arguments represent linguistic alchemy that this court will not entertain. This court decided the issue of personal jurisdiction nearly two years ago, denied Defendants' request for a stay in answering Plaintiff's second amended complaint while at the same time directing Defendants to seek consideration before the New York State Supreme Court, Appellate Division, Second Department, and provided ample time for the parties to reach a settlement of the issues raised in this litigation.

"Pursuant to CPLR 3215, a plaintiff moving for leave to enter a **default judgment** must file proof of: (1) service of the summons and the complaint, (2) the facts constituting the claim, and (3) default by the defendant" (*Rosenzweig v Gubner*, 194 AD3d 1086, 1088 [2d Dept 2021]; *see* CPLR 3215[f]). "In order to successfully oppose a motion for leave to enter a **default judgment**, a defendant who ha[d] failed to timely appear or answer the complaint must provide a reasonable excuse for the default and demonstrate the existence of a potentially meritorious defense to the action" (*Cartessa Aesthetics, LLC v Demko*, 217 AD3d 821, 821-822, [2d Dept 2023], quoting *Maldonado v Mosquera*, 186 AD3d 1352, 1353 [2d Dept 2020]; *see Rosenzweig*, 194 AD3d at 1088; *Nowakowski v Stages*, 179 AD3d 822, 823 [2d Dept 2020]; *see generally* CPLR 5015[a][1]); *see Bachvarov v. Khaimov*, 224 AD3d 724, 725 [2d Dept 2024]).

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<sup>1</sup> On June 10, 2024, this Court, on its own motion, vacated its April 5, 2024 order (filed on April 8, 2024) directing the traverse hearing.

Defendants cross-motion belies the fact that they failed to timely answer or move to dismiss within the statutory time limits, nor do they raise a possible meritorious defense. The record lacks any argument remotely indicating a reasonable excuse for the inordinant delay in answering Plaintiff's complaints. Even assuming Defendants met their initial burden coming forward with a reasonable excuse for their delay in answering, the meritorious defense seeks to shroud waived personal jurisdiction arguments as subject matter jurisdiction arguments by restating that Plaintiff fails to allege a central element to the causes of action pled. Here, the waiver of the defense of personal jurisdiction by defendants estopps the use of this argument as a substantive defense to eliminate an essential element of the causes of action pled. Consequently, this Court grants Plaintiff's motion for a default and sets this matter down for an inquest on damages.

Accordingly, it is hereby:

ORDERED, Plaintiff's motion (006 and 008) seeking a default judgment and permission to file a note of issue is granted; it is further

ORDERED, Defendants' cross-motion (007 and 009) seeking dismissal of plaintiff's complaint is denied; and it is further

ORDERED, that this case shall proceed to an inquest on damages before a court attorney referee upon the filing of a note of issue and certificate of readiness with the clerk.

DATED: November 15, 2024

ENTER,



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**Hon. Paul Marrone, Jr., J.S.C.**