

**Our Children's Found., Inc. v OvaLab, LLC**

2025 NY Slip Op 32425(U)

July 7, 2025

Supreme Court, New York County

Docket Number: Index No. 650628/2025

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.



the discretion to vacate a default lies with the motion court. *White v Incorporated Village of Hempstead*, 41 AD3d 709 [2nd Dept 2007].

Here, defendant asserts that vacatur is warranted because it did not receive actual notice of the action due to an outdated address on file with the Secretary of State. Defendant also claims to have meritorious defenses to plaintiff's claims under both the purchase and sale agreement and the lease.

In opposition, plaintiff contends that defendant cannot meet the statutory requirements under CPLR § § 317 or 5015(a)(1). A party may not obtain relief under CPLR §317 where it had actual knowledge of the claims against them. *4CS Ltd. v Kahiri Diamonds Ltd.*, 230 AD3d 1022, 1022 [1st Dept 2024] (denying motion to vacate where Defendant admitted in an affidavit, he was aware plaintiff filed suit and engaged in negotiations with plaintiff during that period). These negotiations “manifests actual notice of the action.” Plaintiff asserts that defendant had actual notice through prior counsel and a Zoom meeting well before the default judgement was entered. Further, a party's failure to maintain accurate address records with the Secretary of State does not constitute a reasonable excuse. *Davis v Blev Realty LLC*, 217 AD3d 563, 563 [1st Dept 2023](denying motion to vacate default judgment where “defendant offered no reasonable explanation” as to why it did not update its address with the Secretary of State). Here, defendant concedes that it did not update its registered address as it was an unintentional oversight to update, thus this omission does not excuse the default.

Finally, defendant failed to respond in a timely manner and has not provided any explanation for that failure. Thus, the Court finds that defendant has failed to establish that it was not served for the purposes of CPLR §317, nor that it has a reasonable excuse for default under

CPLR §5015(a)(1). As such, the Court need not address the issue of whether they have a meritorious defense to this action.

*Motion Sequence 003*

Madison Title Agency, Inc. (“Madison Title”) filed a motion to intervene in the action and submitted supporting papers. Madison Title, a neutral escrow agent, was altered to this action after Plaintiff Our Children’s Foundation Inc. demanded that Madison Title release the contract deposit funds pursuant to the Court order. Madison Title holds the money in escrow in connection with the real estate contract between plaintiff and defendant. Madison Title sought intervention pursuant to CPLR §1012(a)(3) and/or CPLR §1013, to intervene in this action, and upon intervention, pursuant to CPLR §2106, to deposit the contract funds into court, or alternatively to pay the funds to a substitute escrow agent, and for an order discharging Madison Title from further liability or obligation as escrow agent with respect to the funds.

During oral argument Plaintiff did not oppose Madison Title’s intervention, so that the Court could exercise jurisdiction over the intervenor and issue an order governing the release of the funds from escrow. Moreover, no party has submitted any opposition to the motion, and no objections have otherwise been raised to the relief requested.

Accordingly, it is hereby

ADJUDGED that defendant’s motion to vacate the default judgement is denied; and it is further

ORDERED that the motion by Madison Title to intervene in this action pursuant to CPLR §1012(a)(3) and/or CPLR §1013 is granted, and Madison Title is permitted to intervene in the above-entitled action as a party defendant; and it is further

ORDERED that Madison Title is to pay said funds to plaintiff not more than 10 days following service of this Order with notice of entry; and it is further

DECLARED that upon payment of the Contract Deposit as set forth above, Madison Title shall be discharged from all further obligations and liabilities regarding the Contract Deposit and under the Escrow Agreement.

  
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7/7/2025  
DATE

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LYLE E. FRANK, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	FIDUCIARY APPOINTMENT
<input type="checkbox"/>	REFERENCE

CHECK IF APPROPRIATE: