

Law Offs. of Joseph H. Nivin, P.C. v Gaines

2025 NY Slip Op 32927(U)

August 1, 2025

Supreme Court, New York County

Docket Number: Index No. 657352/2020

Judge: Debra A. James

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES

PART 59

Justice

-----X

THE LAW OFFICES OF JOSEPH H. NIVIN, P.C.,

Plaintiff,

- v -

TAMI GAINES,

Defendant.

-----X

INDEX NO. 657352/2020

MOTION DATE 07/02/2025

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 38, 39, 40, 41, 43, 44, 45, 46, 48, 50, 51

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

ORDER

Upon the foregoing documents, it is

ORDERED that the motion, pursuant to CPLR 5015(a)(1), of defendant Tami Gaines to vacate the judgment dated February 16, 2022, which judgment was granted on default, is denied; and it is further

ORDERED that the interim stay of execution on the wages of defendant is hereby vacated and lifted; and it is further

ORDERED that defendant's motion to seal the file is denied, without prejudice to defendant moving to redact any and all portions of records that contain personally identifiable information.

DECISION

By Order dated November 26, 2021, this court granted plaintiff's motion for a default judgment in the amount of \$77,355.43 against defendant. Such judgment was entered on the docket, with notice of entry mailed to defendant on February 26, 2022 (NYSCEF Doc No 036). More than three years later, on March 31, 2025, defendant moves to vacate her default.

CPLR 5015(a)(1) provides:

On motion. The court which rendered a judgment or order may relieve a party from it upon such terms as may be just, on motion of any interested person with such notice as the court may direct, upon the ground of: 1. excusable default, if such motion is made within one year after service of a copy of the judgment or order with written notice of its entry upon the moving party, or, if the moving party has entered the judgment or order, within one year after such entry.

Defendant had until February 27, 2023, to move to vacate her default pursuant to CPLR 5015(a)(1), and therefore she moved more than two years late. Defendant does not set forth any excuse for her failure to move to vacate the default judgement within one year, and therefore this court is without discretion to relieve her of such judgment granted against her on default. See Northern Source, LLC v Kousouros, 106 AD3d 571, 572 (1st Dept 2013). Her statements that she corresponded with plaintiff counsel on March 22, 2021, requesting that he indefinitely extend the time for her to answer the complaint, which was delivered to her personally on January 29, 2021 (see Affidavit

of Service, made under oath on January 29, 2021), until she retained an attorney is per se unreasonable. At all times, defendant had the right to represent herself, but never sought timely to appear on her own behalf, or timely interpose her defense(s) before the court. Nor does defendant offer any reason that she did not seek assistance with electronic filing from the court until four years after she signed the Stipulation dated February 18, 2021, which extended her time to answer to March 18, 2021.

Nor does defendant's alleged lack of access to her mail box reasonably explain why she never answered the complaint, which was personally served upon her.

Though the circumstances of defendant's financial difficulties and ongoing custody disputes with her former husband are quite unfortunate and though her dissatisfaction with plaintiff's representation of her in Family Court may constitute a meritorious defense, her lack of reasonable excuse for her failure to raise these matters timely in an answer, or even in opposition to plaintiff's motion for a default judgment, and instead only responding upon service of the income execution on April 23, 2025, leaves this court with no discretion to grant her relief. See Caba v Rai, 3 AD3d 578, 582 (1st Dept 2009).

There are court rules concerning the redaction of personally identifiable information and defendant may identify

any record (e.g., home addresses, social security numbers, date of birth, bank account numbers) and move to redact such information. However, she has not shown good cause, pursuant to 22 NYCRR § 216.1 to seal the entire file or to proceed anonymously. See Thomas v Condon, 128 AD3d 528 (1st Dept 2015) and Maxim Inc v Feifer, 145 AD3d 516 (1st Dept 2016).

Debra A. James

20250801172623DJAMES79F0D58B9C7F42D5BF29FC1CB8447781

<u>8/1/2025</u>			<u>DEBRA A. JAMES, J.S.C.</u>	
DATE				
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE