SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ADAM SILVERA** **PART** **01**

Justice

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H. M. A., H. J. A., T. A., A. F.

Plaintiff,

- v -

JOHN MICHAEL ATOYNATAN,

Defendant.

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INDEX NO. 951280/2021

MOTION DATE 04/28/2023

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 69, 72, 73, 74, 75, 76, 77

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

Upon the foregoing documents and for the reasons set forth below, this Court denies in its entirety the order to show cause by the defendant, John Michael Atoynatan ("Defendant"), seeking to vacate Defendant's default, to extend Defendant's time to answer the complaint of the plaintiffs ("Plaintiffs"), and to compel Plaintiffs to accept Defendant's answer. *See* Order to Show Cause at 1.

Under CPLR § 5015(a)(1), a court may vacate a prior order if the defendant "establish[es] both a reasonable excuse for the default and a potentially meritorious defense to the action" and if justice requires vacatur. *979 Second Ave. LLC v Yue Wah Chao*, 227 AD3d 436, 436 (1st Dep't 2024); *see also* CPLR § 5015(a)(1) ("The court which rendered a judgment or order may relieve a party from it upon such terms as may be just[] … ."). Under CPLR § 2005, "the court shall not, as a matter of law, be precluded from exercising its discretion in the interests of justice to excuse delay or default resulting from law office failure."

In this case, Defendant seeks to vacate the order of the Honorable Alexander Tisch granting Plaintiffs a default judgment against Defendant. *See* Decision + Order on Ex Parte

Application, Mar. 13, 2023 (the "Default Judgment"). Defendant argues that vacatur is warranted for three reasons: because the Court lacks personal jurisdiction over Defendant, because Plaintiffs are collaterally estopped from bringing their claims, and because Plaintiffs would not be prejudiced and public policy favors resolution on the merits.[1]

First, Defendant is incorrect that the Court lacks personal jurisdiction because Plaintiffs never effected proper service. *See* Support at 6-7. Defendant previously waived jurisdictional defenses as part of a bargained-for exchange to extend Defendant's time to answer. *See* Jurisdictional Waiver ¶ 4. Defendant never answered, purportedly due to law office failure and now raises the exact defenses previously waived. *See* n 1, *supra*. The Court will not condone Defendant's attempt to have his cake and eat it too. *See Aloizos*, 171 AD2d at 427 (refusing to extend the defendant's time to answer because "[t]he failure to answer, contrary to the defendant's counsel's characterization of it, was not inadvertent, but [rather] the result of the defendant's attempt to obtain the benefit of the stipulation extending [the defendant's] time to answer, which was conditioned on [the] defendant's waiver of its jurisdictional defense, without fulfilling that condition").

Second, Defendant is incorrect that Plaintiffs are collaterally estopped from bringing their claims. To assert collateral estoppel, the party invoking estoppel must prove that the issue was thoroughly litigated in a prior action. *See Stolmeier v Fields*, 280 AD2d 342, 344 (1st Dep't

[1] Defendant's arguments speak primarily to the "potentially meritorious defense" prong of vacatur. Defendant fails to materially address the "reasonable excuse" prong, beyond passing comments that "[l]aw office failure or delay should not preclude Defendant from the opportunity to be heard on the merits" and that "Defendant's law firm inadvertently failed to upload an answer." *See* Defendant's Memorandum of Law in Support of His Motion to Vacate the Order Dated March 13, 2023 ("Support") at 6. Standing alone, such comments fall far short of establishing a reasonable excuse. And the full context—Defendant now seeks vacatur by relying on jurisdictional defenses that it knowingly waived in a bargained-for exchange, *see id.* at 4-8; Affirmation in Opposition ("Opposition"), Exh. D, Stipulation to Adjourn Return Date and Defendant's Time to Respond ("Jurisdictional Waiver") ¶ 4—clarifies that Defendant's "delay can in no way be characterized as law office failure." *See Aloizos v Trinity Realty Corp.*, 171 AD2d 426, 427 (1st Dep't 1991).

2001); *Lukowsky v Shalit*, 110 AD2d 563, 567 (1st Dep't 1985). That is not the case here. Defendant does not indicate that any issue was decided in two prior actions brought by Plaintiffs—let alone that any issue was "clearly raised … and decided against" Plaintiffs. *See* Support at 7-8. Indeed, Plaintiffs did not even file a complaint in either of those actions. *See* Opposition ¶¶ 16-22, 28. And Defendant admits that Plaintiffs abandoned those actions. *See* Support at 3, 7-8. As no issue in those actions seems to have been thoroughly litigated, Defendant's argument must fail.

Third, Defendant's argument that Plaintiffs would not be prejudiced and that public policy favors resolution on the merits is a red herring. Without a reasonable excuse for default and a potentially meritorious defense, vacatur is improper under CPLR § 5015(a)(1). *See 979 Second Ave. LLC*, 227 AD3d at 436.

Thus, because Defendant failed to establish a reasonable excuse and a potentially meritorious defense, Defendant's motion, via order to show cause, to vacate the Default Judgment must be denied. And because the Court denies vacatur, there is no reason to entertain the remainder of Defendant's order to show cause, seeking to extend Defendant's time to answer Plaintiffs' complaint and to compel Plaintiffs to accept Defendant's answer.

Accordingly, it is

ORDERED that Defendant's motion to vacate his default is denied in its entirety and the matter shall be set down for an inquest; and it is further

ORDERED that, within 30 days of entry, Plaintiffs shall serve all parties with a copy of this Decision/Order with notice of entry; and it is further

ORDERED that, upon the filing by the plaintiff with the General Clerk's Office of a copy of this order with notice of entry, the Clerk shall place this matter upon the trial calendar for an inquest; and it is further

ORDERED that such filing with the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website).

This constitutes the Decision/Order of the Court.

7/11/2025
DATE

ADAM SILVERA, J.S.C.

CHECK ONE:	[ ]	**CASE DISPOSED**		[X]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[X] **DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**