

Lakhi Gen. Contr., Inc. v Saga Mgt. Group Inc.

2025 NY Slip Op 33132(U)

August 19, 2025

Supreme Court, New York County

Docket Number: Index No. 653717/2022

Judge: Suzanne J. Adams

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This opinion is uncorrected and not selected for official publication.

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

PRESENT:	<u>HON. SUZANNE J. ADAMS</u>	PART	40M
	<i>Justice</i>		
-----X		INDEX NO.	<u>653717/2022</u>
LAKHI GENERAL CONTRACTOR, INC.,		MOTION DATE	<u>06/16/2025</u>
Plaintiff,		MOTION SEQ. NO.	<u>003</u>
- v -			
SAGA MANAGEMENT GROUP INC., SAM GALASSO		DECISION + ORDER ON	
Defendant.		MOTION	
-----X			

The following e-filed documents, listed by NYSCEF document number (Motion 003) 55, 56, 57 were read on this motion to/for REARGUMENT/RECONSIDERATION.

This court’s decision and order dated May 12, 2025, denied defendants’ motion to vacate a default judgment, on the grounds of defendants’ failure to appear for oral argument. Defendants now move for an order granting leave to renew and reargue the May 12, 2025, decision and order, and, upon reargument, vacating the default judgment. Plaintiff opposes the motion. For the reasons set forth below, the motion to renew and reargue is denied.

Plaintiff commenced this action in October 2022 alleging breach of contract and nonpayment for the leasing, installation, and dismantling of scaffolding equipment. By decision and order dated October 31, 2023, this court granted defendants’ prior attorney’s motion to be relieved as counsel and ordered defendants to appear in court on January 22, 2024, with new counsel (NYSCEF Doc. No. 25). Defendants failed to appear on January 22, 2024, and this court granted plaintiff a default judgment against defendants in the amount of \$526,182.00 by decision and order dated January 22, 2024, (NYSCEF Doc. No. 29). The court’s amended order dated June 18, 2024, granted the default judgment and directed the Clerk to enter judgment accordingly

(NYSCEF Doc. No. 33). Pursuant thereto a money judgment was entered against defendants on June 24, 2024 (NYSCEF Doc. No. 34). Thereafter, defendants moved to vacate the default judgment, alleging they were unaware of their obligation to appear on January 22, 2024, because they did not receive the page of the October 31, 2023, decision and order directing said appearance. Oral argument of defendants' motion to vacate was scheduled for May 12, 2025, at which time defendants again failed to appear. As a result, defendants' motion to vacate the default judgment was denied by decision and order of the court dated May 12, 2025 (NYSCEF Doc. No. 53).

CPLR § 2221(d) requires that a motion for leave to reargue be “based on matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion.” CPLR § 2221(e) requires that a motion for leave to renew be “based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and shall contain reasonable justification for the failure to present such facts on the prior motion.” Defendants style the instant motion as one to “renew and reargue” the May 12, 2025, decision and order. Thus, under CPLR § 2221(f), when considering combined motions for leave to reargue and renew, the court must “decide each part of the motion as if it were separately made.” Finally, on a motion to vacate a judgment, the court has discretion to relieve a party from a judgment or order entered by it on the ground of excusable default if such motion is made within one year after service of a copy of the judgment or order with notice of its entry upon the moving party (CPLR § 5015[a][1]). A motion to vacate may be granted where the moving party shows “both an excusable default and a meritorious defense” (*Dong v Howe*, 219 AD3d 1219 [1st Dept 2023]).

Here, defendants have failed to show “matters of fact or law allegedly overlooked or misapprehended by the court in the prior motion” or “new facts . . . that would change the prior

determination” (*see* CPLR § 2221). The basis for the instant motion is that counsel for the defendants “was unaware that an appearance was necessary on the return date of defendants’ motion” on May 12, 2025 (NYSCEF Doc. No. 56). The court finds this excuse unavailing where the May 12, 2025, appearance is described as an “in person oral argument” on the publicly accessible New York State Unified Court System WebCivil Supreme website used for calendaring appearances. Indeed, the website calendar entries for this matter clearly set forth the court dates, their purpose, and whether personal appearances are required. While a court has the discretion to accept law office failure as a reasonable excuse, such excuse must be supported by detailed allegations of fact explaining the failure (*Ibrahim v Nablus Sweets Corp.*, 161 AD3d 961, 963 [2d Dept 2018]; *CEO Bus. Brokers, Inc. v Alqabili*, 105 AD3d 989, 990 [2d Dept 2013] [allegations of law office failure may not be vague, conclusory, or unsubstantiated]). Here, the court finds that merely failing to be aware of a court mandated appearance, without more, does not constitute a reasonable excuse of law office failure.

Moreover, even if the court were to grant the motion to renew or reargue, and thus consider the underlying motion to vacate the default pursuant to CPLR § 5015, the motion would be denied because the record does not support a vacatur. In defendants’ prior motion to vacate the default judgment, they allege that they were unaware of their obligation to appear on January 22, 2024, because they did not receive the page of the October 31, 2023, decision and order directing said appearance (NYSCEF Doc. No. 36). However, as noted above, the court website calendar entries for this matter set forth all dates and instructions regarding appearances, and it indicates that defendants were directed to appear in person with counsel on January 22, 2024. The court record also shows that defendants were served with notice of entry of the default judgment against them in February 2024 (NYSCEF Doc. No. 30, 31). Defendants fail to show a reasonable excuse for

the default on January 22, 2024. As such, it is unnecessary to reach the question of a potentially meritorious defense (*see Wells Fargo Bank, N.A. v. Cisse*, 156 AD3d 545 [1st Dept 2017]).

Accordingly, it is hereby

ORDERED that defendants' motion is denied in its entirety.

This constitutes the decision and order of the court.

8/19/2025

DATE

SUZANNE J. ADAMS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE