

**269 W. 87th St. Apt. Corp. v Leeding Bldrs. Group
LLC**

2025 NY Slip Op 34584(U)

December 1, 2025

Supreme Court, New York County

Docket Number: Index No. 161625/2021

Judge: Mary V. Rosado

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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: HON. MARY V. ROSADO PART 33M

Justice

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INDEX NO. 161625/2021

269 WEST 87TH STREET APARTMENT CORP., and QSB
267 PROPERTY CO, LLC,

MOTION DATE 10/07/2025

Plaintiffs,

MOTION SEQ. NO. 005

- v -

LEEDING BUILDERS GROUP LLC, DONATO,
INC., HIGHBURY CONCRETE, INC., and KINGDOM
ASSOCIATES, INC.

DECISION + ORDER ON
MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 98, 99, 100, 101,
102, 103, 104, 105, 106, 107, 108, 109, 110

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

Upon the foregoing documents, and after a final submission date of November 6, 2025,
Defendant Donato, Inc.'s ("Donato") motion to vacate the default judgment entered against it by
Decision and Order dated March 28, 2023 (Kraus, J.) is granted.

Plaintiffs 269 West 87th Street Apartment Corp. and QSB 267 Property Co, LLC
("Plaintiffs") sue Defendants for property damage stemming from Defendants' construction at 269
W. 87th Street, New York, New York (the "Premises"). The property damage was caused by an
water allegedly overflowing from a detention tank on July 8, 2021. Default judgment was entered
against Donato on March 28, 2023. The case has not progressed very far in pre-trial discovery due
to a stay of discovery while a motion to dismiss remained sub judice, followed by another stay
imposed after Defendant Highbury Concrete, Inc.'s attorneys withdrew as counsel. Based on the
last compliance conference order, written discovery was ongoing, and depositions have not yet
been completed. On October 7, 2025, Donato appeared and filed this motion to vacate its default.

According to Gordon Rugg, Donato's principal, he claims, under the penalties of perjury, that he never received service of process and was never on notice of this action until June of 2025. He also claims his insurance company, Travelers, never received any notice of this action. He claims Donato has a meritorious defense based on the statute of limitations. The only parties to oppose the motion are the Plaintiffs. Defendant Leeding Builders Group LLC ("Leeding") joins Donato's application to vacate its default.

Donato established *prima facie* grounds for vacating its default judgment pursuant to CPLR 317 through the sworn statement from one of its principals that it first became aware of this lawsuit in June of 2025 after default judgment was already entered against it (*Corley v 337 West 138 Street Holdings LLC*, 237 AD3d 591, 592 [1st Dept 2025]). Plaintiffs have not raised an issue of fact in opposition as there is no return receipt indicating any of the mail was delivered or received. Plaintiffs instead rely on a 12-paragraph attorney affirmation to argue that Donato has not established a reasonable excuse or meritorious defense. But vacatur of default under CPLR 317 does not require a reasonable excuse, it only requires a showing that (1) service was made in a manner other than personal delivery; (2) defendant did not receive actual notice of the process in time to defend that action; (3) that the defendant has a meritorious defense, and (4) that the motion was made within one-year of learning of the default judgment and within five years from entry of the default judgment (*see, e.g. Eugene Di Lorenzo, Inc. v A.C. Dutton Lumber Co., Inc.*, 67 NY2d 138, 141-42 [1986]).

Here, all the requirements to grant vacatur of default under CPLR 317 have been met. Donato was not served personally but via the Secretary of State. The uncontroverted affirmation of Mr. Rugg establishes Donato did not receive actual notice of the lawsuit until after default judgment was entered. Donato also raises the statute of limitations as a meritorious defense. This

defense does not need to be proven but must merely set forth facts sufficient to make a *prima facie* showing of the defense (*see Bokum v BUFNY II Associates, L.P.*, 238 AD3d 559, 560 [1st Dept 2025]). Finally, the application to vacate its default was made less than one year after learning of the default judgment.

Moreover, as depositions have not been completed, and the parties are still disputing the production of documentary and written discovery, Plaintiffs fail to show they will be sufficiently prejudiced by vacating Donato's default, and public policy favors resolving cases on the merits (*Genao v Salcedo Maintenance Corp.*, 168 AD3d 528, 529 [1st Dept 2019]). As there is some evidence that Donato was a plumbing subcontractor who worked on the detention tank, it is an important party to ensure the case is resolved on the merits. Therefore, Donato's motion to vacate its default judgment is granted.

Accordingly, it is hereby,

ORDERED that Donato's motion to vacate its default is granted on condition that Donato serve and file an answer to the complaint herein, or otherwise respond thereto, within 20 days from service of a copy of this order with notice of entry; and it is further

ORDERED that Donato shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office; and it is further

ORDERED that such service upon 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); and it is further;

ORDERED that counsel are directed to appear for status conference on February 11, 2026; and it is further

ORDERED that within ten days of entry, counsel for Donato shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

<u>12/1/2025</u> DATE					<u>Mary V Rosado JSC</u> HON/ MARY V. ROSADO, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED		<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:		SETTLE ORDER			OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	REFERENCE
				<input type="checkbox"/>	FIDUCIARY APPOINTMENT