

SRS Capital Funds, Inc. v Morgantown Decks LLC

2025 NY Slip Op 34931(U)

December 18, 2025

Supreme Court, Kings County

Docket Number: Index No. 501659/2020

Judge: Reginald A. Boddie

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This opinion is uncorrected and not selected for official publication.

At an IAS Part 95 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 18th day of December 2025.

P R E S E N T:

Honorable Reginald A. Boddie
Justice, Supreme Court

-----X
SRS CAPITAL FUNDS, INC.,

Plaintiff,

Index No. 501659/2020

-against-

Cal. No. 4 MS 2

MORGANTOWN DECKS LLC/ SELECT DECKS LLC
DBA SELECTDECKS and JAMES BALDWIN, II,

Decision and Order

Defendants.
-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

MS 2

38-50

Defendants' order to show cause to vacate the default judgment entered on March 13, 2020, is decided as follows:

Background

This action arises out of the defendants' alleged default under a Purchase and Sale of Future Agreement dated November 23, 2019 (the "Agreement"). Plaintiff served the summons and complaint upon defendants by USPS certified mail on January 29, 2020 (*see* NYSCEF Doc No. 3) and effected an additional mailing pursuant to CPLR 3215(g)(3)(i) on January 31, 2020 (*see* NYSCEF Doc No. 8). Defendants failed to appear or respond, and a default judgment was thereafter entered on March 13, 2020 (the "Judgment") in favor of plaintiff and against defendants in the amount of \$23,282.01 (NYSCEF Doc No. 10).

Defendants move by order to show cause to vacate the Judgment and for leave to appear and answer, arguing the Judgment is void for lack of personal jurisdiction because plaintiff allegedly served the out-of-state defendants only by certified mail and did not file the return receipt. Defendants further assert that the Court lacks subject matter jurisdiction because the Agreement mandates arbitration of “all disputes.” Defendants also claim a reasonable excuse and meritorious defenses, including that SelectDecks LLC was not a contracting party yet its account was restrained, and that the Agreement is otherwise unenforceable because of its illusory reconciliation clause and it being an usurious loan.

In opposition, plaintiff argues that the Agreement expressly authorizes this action to be brought in New York, includes a consent-to-jurisdiction provision, and permits service by certified mail, which defendants undisputedly received. Plaintiff further contends CPLR 317 and 5015(a)(1) relief is unavailable because of actual notice, untimeliness of the order to show cause, willful five-year delay, and lack of a meritorious defense. Plaintiff argues that defendants’ contention that Select Decks is not a contracting party, even if true, does not negate defendants’ Morgantown Decks and James Baldwin’s liability, and that the restrained account is reachable under CPLR Article 52 based on Baldwin’s personal use. Plaintiff further argues the usury defense is meritless under established case law, and, independently, defendants’ OSC is jurisdictionally defective for failing to serve plaintiff’s counsel by personal service as the OSC required.

Discussion

“When a party seeking to vacate an order entered upon default seeks both a discretionary vacatur pursuant to CPLR 5015(a)(1) and raises a jurisdictional objection under CPLR 5015(a)(4), the jurisdictional question must be resolved before determining whether it is appropriate to grant discretionary vacatur of the default under CPLR 5015(a)(1)” (*Vapnersh v Tabak*, 131 AD3d 472, 473 [2d Dept 2015] [citations omitted]).

Here, the Court has subject matter jurisdiction. Section 7.10 of the parties' Agreement contains an express arbitration carve-out permitting a "Permitted Court Action," pursuant to which the parties "shall be permitted to seek and obtain monetary relief, in aggregate, up to an amount equal to the Purchase Amount plus an additional 40% thereof, by filing and maintaining an individual court action concerning a Dispute in a state or federal court located in the State and City of New York." The Purchased Amount under the Agreement is \$28,200.00, and the amount sought by plaintiff falls squarely within that contractual threshold. Accordingly, the arbitration provision does not divest this Court of jurisdiction; rather, the Agreement affirmatively confers it.

Nor is there merit to defendants' challenge to personal jurisdiction. Section 7.10 further provides, in relevant part, that "[f]or any Permitted Court Action hereunder, Buyer may serve Seller and/or Guarantor with process via certified mail by depositing into a United States Postal Service depository a properly postaged envelope addressed to Seller and Guarantor's respective addresses listed herein." The record establishes that service of process was effected in strict compliance with this provision. It is undisputed that defendant James Baldwin received the summons and complaint and personally signed the USPS certified mail return receipts (*see* NYSCEF Doc. No. 19). Accordingly, defendants' contention that the Agreement "does not provide for the service of any legal process other than for a Demand for Arbitration," or that it is "silent as to the service of the summons and complaint," is flatly contradicted by the plain language of the Agreement and is without merit.

It is well settled that a party seeking to vacate a default "must demonstrate both a reasonable excuse for the default and the existence of a meritorious claim" (*Parker v City of New York*, 272 AD2d 310, 310 [2d Dept 2000] [citations omitted]; *see* CPLR 5015[a][1]). "The determination of what constitutes a reasonable excuse for a default lies within the sound discretion of the trial court" (*id.*).

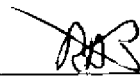
Here, defendants have failed to establish any reasonable excuse for their default. The record demonstrates that defendants received actual notice of this action through multiple means, including service of the summons and complaint by certified mail pursuant to the parties' Agreement, the additional mailing required by CPLR 3215(g)(3)(i), and service of the notice of entry of judgment. Notwithstanding such notices, defendants took no action to appear, answer, or otherwise defend this action for five years, and only sought relief after plaintiff commenced post-judgment enforcement efforts.

Defendants do not dispute that they received these notices. Instead, they assert that they moved to vacate the Judgment because "defendants did not anticipate that the plaintiff would attempt to restrain a bank account belonging to an entity that is not a party to the contract" (NYSCEF Doc No. 41). This assertion does not excuse defendants' failure to timely appear or respond to the action. Under these circumstances, defendants' prolonged and unexplained delay reflects a deliberate decision to ignore the litigation rather than excusable neglect. Because defendants have failed to demonstrate a reasonable excuse for their default, vacatur under CPLR 5015(a)(1) must be denied, without reaching whether they have established a potentially meritorious defense.

Conclusion

Based on the foregoing, plaintiff's motion is denied. Any arguments not expressly addressed herein were considered and deemed to be without merit or unnecessary to address given the court's determination.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.