

Didylowski v Morrison
2025 NY Slip Op 35512(U)
March 10, 2025
Supreme Court, Dutchess County
Docket Number: Index No. 2024-50960
Judge: Michael G. Hayes
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

-----X
SARAH L. DIDYLOWSKI and ELIZABETH
DIDYLOWSKI,

Plaintiffs,

DECISION and ORDER

Index No. 2024-50960

-against-

CHRISTOPHER J. MORRISON, INTEGRATED
PRESERVATION SERVICES, INC., and
JOHN/JANE DOES 1-5,

Defendants.

-----X
HON. MICHAEL G. HAYES, Acting Supreme Court Justice

The Court read and considered the following documents upon
this motion and cross-motion:

PAPERS NUMBERED

Notice of Motion.....	1
Affirmation.....	2
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Notice of Cross-Motion.....	4
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Plaintiffs move for an order, pursuant to CPLR §3215,
awarding them a default judgement against defendant Integrated
Preservation Services, Inc. ("IPS"), including punitive/exemplary
damages, counsel fees and disbursements to be determined at an
inquest. Plaintiffs also seek discovery "in aide of uncovering
the assets held by IPS, and/or the assets transferred by IPS,
useful to satisfy any default judgment entered in the instant
action against IPS..."

Defendant IPS cross-moves for an order allowing it file a late verified answer.

By way of background, this action was instituted by filing of a summons with notice on March 4, 2024. Defendant Christopher Morrison, through the law office of Kevin M. MacKay, PLLC, filed a notice of appearance and demand for a complaint on April 3, 2024. Plaintiffs filed their verified complaint on May 10, 2024. Defendant Christopher Morrison filed an answer on July 1, 2024.

The complaint alleges seven causes of action: (1) violation of the computer fraud and abuse act (18 USC §1030); (2) violation of the stored communication act (18 USC §§2701 & 2707); (3) violation of the wiretap act (18 USC §§2511 & 2520); (4) trespass to chattels; (5) common law trover; (6) *prima facie* tort; and, (7) aiding and abetting tort.

The complaint alleges that on or about June 7, 2022, a Verizon Hum Tracking Device was found by a mechanic performing maintenance/repairs on the plaintiffs' vehicle. Plaintiffs allege that they did not know who had installed the device on their vehicle. Plaintiff Sarah L. Didylowski engaged counsel Michael S. Pascazi, Esq. to commence a special proceeding against Verizon seeking pre-action disclosure. The action resulted in a decision and order dated January 4, 2024, directing pre-action disclosure from Verizon (Sup Ct. Dutchess County, Index 2023-54806, J. Acker). Verizon responded that the HUM was purchased

by defendant Christopher Morrison of Integrated Preservation Services, Inc. The data accessed included tracking days and times, total distance of trips, starting point latitude/longitude, end point latitude/longitude and speeds. Plaintiffs allege that the data contained 504 tracking entries in approximately 5 months in 2022.

In support of their motion, plaintiffs have established *prima facie* that defendant IPS failed to timely appear. On March 16, 2024, defendant IPS was served with the summons with notice. To date IPS has not answered. Notably, the motion for a default judgment was filed on November 19, 2024. After said filing, on December 3, 2024, Mr. Mackay attempted to appear on behalf of IPS. On December 3, 2024, plaintiffs filed a notice of rejection of IPS's demand for a complaint and noted IPS was in default.

In opposition and in support its cross-motion, Mr. MacKay on behalf of IPS states that he was retained to represent both defendants on April 2, 2024. On April 3, 2024, Mr. MacKay maintains that his office filed a notice of appearance and demand for complaint. Mr. Mackay states that his office inadvertently omitted listing IPS on the notice of appearance and verified answer. A verified answer, dated December 24, 2024, is annexed to the cross-motion. Mr. MacKay contends that there would be no prejudice to the plaintiff in permitting the late filing of an answer by IPS.

In reply, plaintiffs contend that defendant has not demonstrated, pursuant to CPLR 5015, both a potentially meritorious defense and a reasonable excuse for its default in answering or appearing.

Discussion

A defendant seeking to vacate a default in answering a complaint on the basis of excusable default and to compel the plaintiff to accept an untimely answer must show both a reasonable excuse for the default and the existence of a potentially meritorious defense (*see Wilmington Sav. Fund Socy., FSB v Cabadiana*, 230 AD3d 831 [2nd Dept 2024]).

"Law office failure may qualify as a reasonable excuse for a party's default if the claim of such failure is supported by a credible and detailed explanation of the default" (*Selene Fin., L.P. v Beltran*, 233 AD3d 822 [2nd Dept 2024]).

Counsel's affirmation, credibly explains that his law firm mistakenly failed to list IPS on the notice of appearance and verified answer. Given the isolated and unintentional nature of the error and the strong public policy in favor of resolution on the merits, the Court, in its discretion, accepts as a reasonable excuse, law office failure (*id.*).

Courts have broad discretion to grant relief from pleading defaults where the moving party's claim or defense is meritorious, the default was not willful, and the other party not

prejudiced (*see Lichtman v Sears, Roebuck & Co.*, 236 AD2d 373 [2nd Dept 1997])). Defendant IPS's delay in serving its answer was brief and not willful, and there is no evidence that the plaintiffs were prejudiced by the delay (*see Khanna v Premium Food & Sports Enter.*, 279 AD2d 508 [2nd Dept 2001])). Furthermore, the proposed verified answer is sufficient to demonstrate a meritorious defense in the context of a motion for leave to serve a late answer pursuant to CPLR §2004 (*see Goldman v City of New York*, 287 AD2d 482 [2nd Dept 2001])).

Accordingly, it is

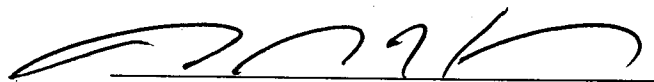
ORDERED, that plaintiffs' motion for a default judgment is denied, it is further

ORDERED, that defendants' cross-motion is granted and the proposed verified answer is deemed timely filed and served, it is

ORDERED, that counsel are directed to appear at an in-person status conference on May 2, 2025 at 10:30 a.m. Adjournments are only granted with leave of the Court.

This constitutes the decision and order of the Court.

Dated: March 10, 2025
Poughkeepsie, New York


HON. MICHAEL G. HAYES, AJSC