

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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EMMIS RADIO, LLC D/B/A HOT 97,

Index No.: 034577/2020

Plaintiff,

-against-

WILLIAM BENSON GROUP, LLC D/B/A
BILLIONAIRES ROW, and D/B/A
BILLIONAIRES ROW CHAMPAGNE, AND
D/B/A BILLIONAIRES ROW, LLC

Defendant.

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**REPLY MEMORANDUM OF LAW IN FUTURE SUPPORT OF
DEFENDANT'S MOTION TO VACATE**

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Attorneys for Defendant
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REPLY ARGUMENT

Defendant filed its application to vacate a default judgment on or about February 26, 2021. Plaintiff has opposed the motion arguing that there is neither a valid excuse or a meritorious defense.

However, these arguments are without merit as more completely set forth herein.

A. DEFENDANT HAS A REASONABLE EXCUSE

In response to Defendant's point that the secretary of state had the wrong address, which required Defendant to update it, (which it now has, see Exhibit A), Plaintiff states that it served a demand letter on the 244 5th Avenue address, which it claims is the same address that the Secretary of State served papers on.

However, this is not accurate. The address listed with the Secretary of State prior to the change this month was actually 1151 Dean Street, Brooklyn, New York. Exhibit B.

As stated in the initial moving papers, Companies which have failed to keep their current addresses up to date with the Secretary of State have been allowed to have default judgements against them vacated and their time to appear in the actions extended. Eugene Di Lorenzo, Inc. v. A.C. Dutton Lumber Co., Inc., 67 N.Y.2d 138, 143, 492 N.E.2d 116, 119 (1986)

The lack of a reasonable excuse for not maintaining a correct address with the Secretary of State does not preclude CPLR 317 relief. Marquette Co. v. Norcem, Inc., 114 A.D.2d 738, 739, 494 N.Y.S.2d 511 (3rd Dept. 1985).

Plaintiff cites to Crespo, which not only involved signed certified mailing receipts by defendant, and a very similar address 100 Brook 'Avenue' and 100 'Brook' Street, but more importantly the motion was filed pursuant to CPLR 5015 not CPLR 317. Crespo v. ADA MGT., 292 A.D.2d 5 (2nd Dept. 2002).

As such, the motion should be denied in this regard.

B. DEFENDANT HAS MERITORIOUS DEFENSES

As stated in the initial moving papers, Defendant has meritorious defenses, including but not limited to the fact that there is no privity of contract.

In response, Plaintiff makes allegations of "scemes" and "defraud[ing]", despite the complaint having no causes of action of fraud, much less any fraud or alter ego allegations, which Defendant of course does not admit. Exhibit C.

More significantly, this vigorous and detailed response from Plaintiff, none of which was in the complaint, clearly indicates that Defendant has valid defenses, and there are a number of issues for the court to flush out.

It should also be noted that no affidavit of the Plaintiff was submitted. An affirmation by an attorney who is without the requisite knowledge of the facts has no probative value. See Di Falco, Field & Lomenzo v Newburgh Dyeing Corp., 81 AD2d 560, 561 (1st Dep't 1981), aff'd 54 NY2d 715 (1981).

As to the claim that the trademark is owned by Defendant, this is also inaccurate, as the document shows trademark listed as owned by Billionaires Row Global, LLC. *Plaintiff's Exhibit G*.

As to the “related” case Plaintiff cites; that is Index No. 656199/2017, it is not even clear that Defendants in that case were aware of the matter until just now, as no attorney had made an appearance on behalf of any Defendant and any award was obtained in default. Exhibit D.

In addition, Defendant submits that the cases that Plaintiff cites where the judgment remained a lien for security, none of which are more recent than 1961, and respectfully submits this is not appropriate in this case, especially in light of the short 20-day period from which the judgement was entered prior to filing the motion.

Defendant respectfully submits that the default should be vacated.

CONCLUSION

Defendant’s motion to vacate should be granted in its entirety, together with other such further relief the court may deem just and proper.

No prior application has been made for the relief requested herein.

Dated: New York, New York
March 29, 2021

Respectfully submitted,

PEYROT & ASSOCIATES, PC

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