

DISTRICT COURT OF THE COUNTY OF SUFFOLK, SIXTH DISTRICT

Present:

HON. James P. Flanagan
Judge

Motion Date November 19, 2021

Slomin's Inc.

Plaintiff

-against-

Shanton Bellamy

Defendant

Upon the following papers numbered 1 to 2.
Read on this motion by defendant to vacate judgment.
Notice of Motion/Order to Show Cause and supporting papers 1.
Plaintiff's Opposition and supporting papers 2.
Answering Affidavits and supporting papers _____
Replying Affidavits and supporting papers _____
Filed papers _____ ;
Other _____

~~(and after hearing counsel in support of and opposed to the motion);~~ it is

ORDERED that, Defendant's motion seeking an order pursuant to CPLR §5015(a)(1), vacating the within judgment (entered on December 2, 2020) must be denied.

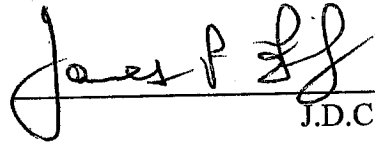
Defendant does not establish "excusable default", which is comprised of BOTH a "reasonable excuse" for non appearance and presentation of a "meritorious defense".

Defendant's excuse is that it "never received the papers to come to court...". The Summons and Complaint were served on February 6, 2020, just prior to the pandemic effecting the courts. (The State's Executive Order created statutory tolls beginning on March 20, 2020). The process server's affidavit of service of the Summons and Complaint, alleges service pursuant to CPLR §308(2) on Ms. Leona, a family member of suitable age and discretion, together with a subsequent mailing of the Summons and Complaint on February 10, 2020 (both at the same address as the Defendant states is her address in the instant Order to Show Cause).

Defendant also does not present a meritorious defense to the Plaintiff's causes of action: breach of a monitoring service contract (\$2,409.71) and failure to pay for oil delivered (\$1,462.34) (See, complaint).

Plaintiff also demonstrates that it mailed defendant an additional copy of the Summons and Complaint on February 14, 2020, prior to entry of judgment (Plaintiff motion, Ex. "E"). E-mail correspondence between the Defendant and Plaintiff's counsel (affixed to Plaintiff's motion at Ex. "F"), demonstrates Defendant's awareness of the action and discussions of a settlement offer by Plaintiff on February 10, 2020. As noted, judgment was entered in December 2020.

New Court Date: _____


J.D.C.

Dated: 12-13-21