

**Louis Monteleone Fibres, Ltd. v Kejriwal Newsprint  
Mills LLC**

2020 NY Slip Op 33853(U)

November 18, 2020

Supreme Court, New York County

Docket Number: 652202/2020

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH **PART** **IAS MOTION 14**

*Justice*

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LOUIS MONTELEONE FIBRES, LTD.,

Plaintiff,

- v -

KEJRIWAL NEWSPRINT MILLS LLC N/K/A RESOURCE  
REUTILIZATION LLC,

Defendant.

-----X

**INDEX NO.** 652202/2020

**MOTION DATE** N/A

**MOTION SEQ. NO.** 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56

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

The motion by defendant to vacate the judgment entered against it (NYSCEF Doc. No. 19) is granted.

**Background**

Defendant moves to vacate the judgment on the ground that the Covid-19 pandemic constitutes a reasonable excuse for its default and that it has a meritorious defense. It explains that the time for it to answer fell within the Governor's executive order tolling deadlines in civil actions. Defendant also maintains that it has a meritorious defense relating to whether plaintiff's shipments violated the terms of the parties' contract.

This case is about a series of agreements in which plaintiff purportedly agreed to sell paper to defendant. Plaintiff claims that it provided the paper that defendant ordered and that defendant did not pay the full amount owed. Defendant submits an affidavit from its director which asserts that the quality of the shipments was unacceptable and that plaintiff tried to

suddenly increase its prices, knowing that defendant had already made commitments to its customers. Defendant explains that the shipments arriving at Indian ports were under lockdown, which prevented defendant from quickly inspecting them and it was later discovered that there were significant quality issues with the shipments. It insists that the shipments contained high moisture levels which led to fungus and deterioration of the cargo.

Plaintiff contends that the judgment should not be vacated because the default was intentional and inexcusable. It claims that defendant only appeared after plaintiff attempted to enforce the judgment. Plaintiff argues that defendant's attorney (who also insisted he was not representing defendant at the time) asked for an extension of time to respond in July 2020 after the time to answer had expired. It argues that the subject executive order, 202.8, did not toll defendant's time to answer and cites to commentary from in the *New York Practice* treatise.

### **Discussion**

“To vacate a default, a party must demonstrate both a reasonable excuse and the existence of a meritorious defense” (*Terrapin Indus., LLC v Bank of New York*, 137 AD3d 569, 570 [1st Dept 2016]).

As an initial matter, the Court declines to read Executive Order 202.8 (and the subsequent orders extending its application) to exclude the tolling of a defendant's time to answer. To embrace such a narrow reading of the subject executive order requires completely ignoring the context in which the order was issued. The order was issued while the vast majority of businesses were shuttered and litigants were prevented from filing cases deemed “non-essential.” The Court is unable to conceive of rational reading of the governor's order that would toll certain deadlines but somehow continue to require a defendant to answer. The purpose was not to protect only plaintiffs, it was to preserve the status quo for all litigants.

At the very least, the executive orders provide defendant with a reasonable excuse for the failure to timely appear and answer. Defendant explained that its business was shut down in March 2020 and its director left New York in the beginning of May. It also points out that because of Covid, it was unable to get access to its files in New York or in India (where the shipments were sent) in order to adequately respond. Of course, the Court would have preferred if defendant had moved for an extension of time to answer, but the fact is that these circumstances provide a reasonable excuse. This Court prefers that cases be decided on the merits and it declines to find that defaulting in the middle of a once-in-a-century global pandemic is not a reasonable excuse.

The Court also observes that while plaintiff stresses that the default should not be excused, plaintiff also missed a deadline. The order to show cause directed that opposition to the instant order to show cause be filed by November 10, 2020 at 5 p.m. (NYSCEF Doc. No. 36 at 2) and the opposition papers were filed at 5:49 p.m. on November 10. To be clear, the Court will consider this opposition; but the Court cannot strictly enforce defendant's time to answer and then overlook plaintiff's failure to comply with a deadline within the same opinion.

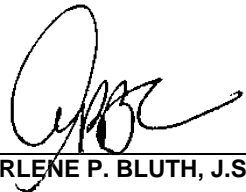
The affidavits of defendant's director establish a meritorious defense. He claims, as described above, that plaintiff sent low quality paper and that once defendant inspected the products, they rejected them (NYSCEF Doc. Nos. 21, 49). He claims that contrary to plaintiff's assertions, defendant did not have the opportunity to inspect the products prior to the shipment to India. He also argues that some of the defects, such the presence of prohibitives and outthrows, and high moisture levels, cannot be gleaned from a cursory inspection (if there was one prior to shipment). Defendant need not establish its defense as a matter of law on this motion. It must only raise a meritorious defense and it has done that here.

Accordingly, it is hereby

ORDERED that the motion by defendant to vacate the judgment and its default is granted, and defendant is directed to answer or otherwise respond to the complaint pursuant to the CPLR. The clerk is directed to restore this case to 'active' status.

Remote Conference: March 4, 2021.

11/18/2020  
DATE

  
ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE