

**Empire Merchants, LLC v Harborview Wine Cellar
Inc.**

2022 NY Slip Op 30497(U)

January 11, 2022

Supreme Court, Kings County

Docket Number: Index No. 510300/2018

Judge: Richard J. Montelione

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART DJMP

DECISION/ORDER

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EMPIRE MERCHANTS, LLC,

Plaintiff,
-against-

Index No.: 510300/2018
Motion Date: 2/9/2021
Mot. Seq. 2

HARBORVIEW WINE CELLAR INC. d/b/a
Roslyn Wine & Liquor and
ANUPAM CHABLANAY,

Defendant(s).

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The following papers were read on this motion pursuant to CPLR 2219(a):

<u>Papers</u>	NYCEF Doc. No.
Defendants' Order to Show Cause dated January 6, 2021 seeking an Order staying, enjoining, and restraining the plaintiff from proceeding with execution of the Nassau County Sheriff's Notice of Levy (NYCEF #48); vacating and setting aside the Default Judgment dated February 28, 2020 and entered October 30, 2020; permitting the defendant to serve and file an answer within twenty days after service of a copy of the Order granting Defendant's motion; Defendant's attorney affirmation of Matt Rothstein, Esq., affirmed on December 18, 2020 (NYCEF #34); Affidavit of Anupam Chablaney, sworn to on December 22, 2020 (NYCEF #35) Exhibits A-F (NYCEF 36-41).....	34-48
Plaintiff's Attorney Affirmation in Opposition of Richard Klass, Esq., affirmed on February 3, 2021 (NYCEF 50); Exhibits A-M (NYCEF 51-63).....	50-63

Upon the forgoing papers, Defendants Harborview Wine Cellar Inc. and Anupam Chablaney ("Defendants") move this Court by Order to Show Cause for an order 1) staying, enjoining, and restraining the Plaintiff from proceeding with execution of the Nassau County Sheriff's Levy pursuant to the Supreme Court Judgment, vacating the default; 2) vacating and setting aside the Default Judgment dated February 28, 2020, and entered by the Court on October 30, 2020, and permitting the Defendants to serve and file an answer within twenty (20) days after service of a copy of the Order Granting Defendants' motion with notice of entry; and 3) granting such other and further relief as deemed proper by the Court.

Background

This is an action for an account stated. The action was commenced by filing of the Summons on May 18, 2018. Service of the Summons and Complaint was effectuated upon Defendant Harborview Wine Cellar Inc. through the Secretary of State. The Summons and Complaint was allegedly served upon Defendant Anupam Chablaney, by affixing the Summons and Complaint to the door of her usual place of abode, on June 13, 2018. Defendants did not answer or appear in this action. On April 15, 2019, Plaintiff, Empire Merchants LLC (“Plaintiff”) moved this Court for a default judgment. By Order dated January 10, 2020, this Court granted Plaintiff’s motion for default judgment and ordered that Plaintiff to “settle an order on notice within 15 days.” By Order dated February 25, 2020, the Court granted default judgment against Defendants in the sum of \$7,010.85, with interest and directed the Clerk of the Court to enter judgment accordingly. A Judgment was entered by the County Clerk on October 30, 2020.

Discussion

Defendants move to stay the execution of the Judgment and vacate the default judgment on the grounds that the Complaint misgenders Anupam Chablaney and misspells her last name and is, therefore, jurisdictionally defective. Specifically, the Complaint uses to the term “his” in reference to Ms. Chablaney, who is female, and her name appears in the caption as Chablanay, while its correct spelling is Chablaney.

A party seeking to vacate a default in appearing or answering must demonstrate a reasonable excuse for the default and a potentially meritorious defense to the action. *Hamilton Public Relations v. Scientivity, LLC*, 129 A.D.3d 1025 (2d Dep’t 2015). The determination of what constitutes a reasonable excuse for a default lies within the sound discretion of the trial

court. *Bardales v. Blades*, 191 A.D.2d 667, 668 (2d Dep't 1993). The misspelling of a defendant's name in the Summons and Complaint has been held to be "a mere irregularity which in no way affects jurisdiction." *Marine Midland Realty Credit Corp. v. Welbilt Corp.*, 145 A.D.2d 84, 89 (3d Dep't 1989); see *State of N.Y. Higher Educ. Servs. Corp. v. Sparozic*, 35 A.D.3d 1069, 1070 (3d Dep't 2006). The Court find that Plaintiff's incorrect use of a male pronoun in the Complaint is a similar misnomer that does not affect jurisdiction. The defendant's affidavit refers to disputing the account stated and claims that the actual amount due was \$4679.32. Defendant attempted to pay this amount by check dated June 21, 2018 which was returned to her as a rejected settlement offer. Notwithstanding that the defendant did not move to reduce the judgment because of a possible mistake, even if this court considered whether a mistake could have been made necessitating the reduction of the judgment in the interest of justice, this relief would be denied. The only evidence of a dispute based on an account stated is made almost two years after the invoices were provided and this delay is unreasonable. *Stardom Brands, LLC v. S.K.I. Wholesale Beer Corp.*, 172 A.D.3d 1266, 2019 N.Y. Slip Op. 04018, 2019 WL 2202156 (2d Dep't 2019), "An agreement may be implied where a defendant retains bills without objecting to them within a reasonable period of time, or makes partial payment on the account" (citation omitted).

Further, except for the affidavit making a generalized statement disputing the amount due, there is absolutely no specificity regarding how the defendant calculated what is claimed to be the correct amount.


It is therefore,

ORDERED that Defendants' motion is DENIED in all respects and all stays are lifted. A copy of this decision and order with notice of entry shall be served by the plaintiff within 30 days

of entry of this order

This constitutes the decision and order of the Court.

Dated: JAN 1 2022


Hon. Richard J. Montelione

KINGS COUNTY CLERK
FILED
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