

**RM Intl. Group Inc. v Nunez**

2022 NY Slip Op 33413(U)

October 6, 2022

Supreme Court, New York County

Docket Number: Index No. 657052/2021

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 14**

*Justice*

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RM INTERNATIONAL GROUP INC.,  
Plaintiff,

- v -

JOE CLAUDIO NUNEZ, ALEJANDRO GUZMAN  
Defendants.

INDEX NO. 657052/2021

MOTION DATE 09/30/2022

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31, 32, 34, 35

were read on this motion to/for VACATE – JUDGMENT AWARD.

Defendant Nunez’s motion to vacate the default judgment entered against him is granted.

**Background**

Plaintiff obtained a default judgment against both defendants in this breach of a commercial lease matter. The Court rejected defendant Nunez’s untimely attempt to obtain an adjournment of that motion. Now, Nunez moves to vacate his default. He claims that he does not reside at the location where service was purportedly effectuated and that he received the motion for a default judgment by mail (when it was forwarded to his new address). Nunez insists he has not lived at the apartment where the papers were sent since 2018.

Nunez also claims he has a meritorious defense because he thought this matter was settled. He insists that he, along with co-defendant Guzman, intended to open a restaurant at the subject premises but that renovations were never completed due to a gas line that had to be installed. He maintains that plaintiff refused to help get the gas line installed and the building

did not have enough pressure to support the line so defendants decided to abandon the business. Nunez argues he reached an agreement with the landlord (plaintiff) where plaintiff would keep the security deposit, defendants gave back the keys and both sides would walk away.

In opposition, plaintiff argues that defendant Nunez did not raise a reasonable excuse for his default. It claims that the DMV record for this defendant shows his address is still registered at the location where plaintiff attempted to serve him, not the new address where Nunez claims he lives. Plaintiff also maintains that Nunez never returned the keys, never surrendered possession of the premises, or paid any rent to plaintiff after taking possession of the premises.

### **Discussion**

“As to vacating the default, a party seeking to vacate a default judgment must demonstrate both a reasonable excuse for the default and a meritorious defense” (*Aetna Life Ins. Co. v UTA of KJ Inc.*, 203 AD3d 401, 401, 160 NYS3d 590 (Mem) [1st Dept 2022]). The Court grants the motion. Nunez demonstrated a reasonable excuse by swearing that he moved away from the apartment where service was purportedly effectuated. He also explained how he got notice of this case, that he received mail forwarded to his current address.

And he raised a meritorious defense to this case. He explained that he thought the matter was settled when plaintiff allegedly agreed to keep the security deposit and he returned the keys. According to Nunez, he expended significant resources to renovate the space and so terminating the contract was good for every party (he now claims he will seek recovery for the amount he spent to renovate the premises). While plaintiff disputes these facts, that does not compel the Court to deny the motion. Nunez merely had to raise a meritorious defense at this stage and he

has done so. Plus, this Court prefers to decide cases on the merits and defendant Nunez should have that chance under these circumstances.

The Court observes that to the extent Nunez attempted to claim that service was not completed on his co-defendant Guzman, that argument is without merit because Nunez cannot make arguments for this non-appearing defendant.

Accordingly, it is hereby

ORDERED that the motion by defendant Nunez to vacate his default and the judgment entered against him is granted and he shall answer pursuant to the CPLR; and it is further


ORDERED that, within 7 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh));] and it is further

ORDERED that upon receipt of the foregoing, the Clerk of the General Clerk's Office shall immediately restore the case to the active calendar.

Conference: October 31, 2022 at 11 a.m. By October 24, 2022, the parties are directed to upload 1) a discovery stipulation signed by all sides, 2) a stipulation of partial agreement or 3) letters explaining why no agreement about discovery could be reached. The Court will then

assess whether an in-person conference is necessary. The failure to upload something by October 24, 2022 will result in an adjournment of the conference.

<u>10/6/2022</u> DATE					 ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					OTHER
					REFERENCE