SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYLE FRANK** **PART** **11M**

Justice

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TANYSHA WRIGHT,

Plaintiff,

- v -

SHENANDOAH INVESTORS, LLC,BROAD RIVER INVESTORS, LLC,CAVAN PROPERTIES, INC.

Defendant.

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INDEX NO. 155007/2022

MOTION DATE 02/01/2023

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

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

Respondents Shenandoah Investors, LLC, Broad River Investors, LLC, and Cavan Properties, Inc. move vacate the default judgment issued by this court on September 7, 2022 (NYSCEF Doc. No. 25), pursuant to CPLR § 5015(a)(1), claiming they have reasonable excuses for failing to appear before the court and they have meritorious defenses to all the claims asserted by petitioners under the former Debtor and Creditor Law and the charging order issued by the court to attach Cavan Properties' membership interest in the co-respondents LLCs.

CPLR § 5015(a)(1)

"In order to obtain relief from an order or judgment on the basis of an excusable default pursuant to N.Y. C.P.L.R. 5015 (a) (1), the moving party must provide a *reasonable excuse* for the failure to appear *and* must further demonstrate that the case has merit. Moreover, it is *within* the sound *discretion of the motion court* to determine whether the proffered excuse and the statement of merits are sufficient." *Navarro v. A. Trenkman Estate, Inc.*, 279 A.D.2d 257, 258 [1st Dept. 2001]. Put differently, failure to prove either prong by the moving party would be sufficient for

the court to deny to motion. See *Caba v Rai*, 63 AD3d 578, 582 [1st Dept 2009] (Absent a reasonable excuse, vacatur is not appropriate regardless of whether defendant has a meritorious defense).

At issue here is whether failure by the registered agent of co-respondents Shenandoah and Broad River to forward the served petition to the designated person is an excusable mistake to vacate the default judgment. Respondents argued that the mistake is excusable because first, it is petitioner's fault to serve the process on the address kept by the New York Secretary of State with the knowledge that the address is incorrect and failed to be updated by respondents. Second, the negligence is analogous to a good-faith mistake by an insurance company or a law office, and thus should be excused pursuant to New York law. See NYSCEF Doc. No. 33, page 3, 6.

The court disagrees with the respondents' arguments. Keeping the address on file with the Secretary of State up-to-date is the corporate respondent's obligation and it is not the petitioner's job to double-check the veracity of the address. See Business Corporation Law § 306. Also see *Crespo v A.D.A. Mgt.*, 292 AD2d 5, 9-10 [1st Dept 2002] ([t]he failure of a corporate defendant to receive service of process due to breach of the obligation to keep a current address on file with the Secretary of State does *not* constitute a reasonable excuse). Thus, the registered agent's failure to forward the petition to the point person, accidental or not, does not give the court any grounds to excuse the respondents' nonresponse to the petition.

Charging order pursuant to Virginia and South Carolina LLC Acts (The Seventh and Eighth Claim)

Even assuming that the Court were to find the respondents have demonstrated a reasonable excuse fot the default, this motion must fail because the respondents have not demonstrated a meritorious defense to the action. Both Virginia and South Carolina LLC Acts require "a court

having jurisdiction" to charge the transferrable interest of the judgment debtor to satisfy the judgment. The court, therefore, determines whether it has competent jurisdiction to issue the charging order against Cavan's membership interests in either LLC.

Section 801 of the New York Limited Liability Company (LLC) Law states in pertinent part that "the laws of the jurisdiction under which a foreign limited liability company is formed govern… the liability of its members." Accordingly, the court looks to the respective LLC Acts of both Virginia and South Carolina for clues on the nature of membership interest.

§ 13.1-1038 of the Virginia LLC Act defines the LLC membership interest as the member's intangible personal property (A membership interest in a limited liability company is personal property. The *only transferable interest* of a member in the limited liability company is the member's share of the profits and losses of the limited liability company and the member's right to receive distributions).

Section 33-44-501 of the South Carolina Uniform LLC Act likewise shows that the LLC membership interest is intangible personal property (A distributional interest in a limited liability company is personal property; A member is *not* a co-owner of, and has no transferable interest in, property of a limited liability company).

Therefore, a charging order against Cavan's membership interest in either LLC does not frustrate the property right of either company, thus the court is not asserting *in rem* jurisdiction over the property outside New York. Whether the court has personal jurisdiction over the LLC has no bearing on the issue in dispute here. Since the debtor Cavan is a New York State corporation and is subject to the personal jurisdiction of the court, the court has jurisdiction over its personal property in consequence. See *Hotel 71 Mezz Lender LLC v Falor*, 14 N.Y.3d 303, 307 (A court with personal jurisdiction over a nondomiciliary present in New York has jurisdiction over that

individual's tangible or intangible property, even if the *situs* of the property is outside New York). Accordingly, respondents did not state a meritorious defense to both claims here.

Since the court has the proper jurisdiction to issue the charging order, it needs not reach the issue of whether the conveyance of property to both LLCs is fraudulent under the former Debtor and Creditor Law. Fraudulent or not, the membership interest is Cavan's personal property, thus subject to attachment by the court here.

The Court has reviewed the remainder of the respondents' arguments and finds them unavailing. Accordingly, it is hereby

ADJUDGED that defendant's motion to vacate the default judgment pursuant to CPLR § 5015(a)(1) is denied.

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4/28/2023
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED	X	DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE