

At an I.A.S. Trial Term, Part <sup>90</sup> of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Borough of Brooklyn, City and State of New York, on the 2<sup>nd</sup> day of March 20 18

P R E S E N T :

Hon. Walker  
Justice

Empire Merchants LLC.

Plaintiff(s)

Cal. No. 11  
Index No. 570280/16

- against -

JOAN HAYDEN @ Bob  
Nebya Gueterch

Defendant(s)

The following papers numbered 1 to read on this motion Papers Numbered

Notice of Motion - Order to Show Cause and Affidavits (Affirmations) Annexed	
Answering Affidavit (Affirmation)	
Reply Affidavit (Affirmation)	
_____ Affidavit (Affirmation)	
Pleadings - Exhibits	
Stipulations - Minutes	
Filed Papers	

Defendant's order to Show Cause to Vacate Judgment and default is denied as no reasonable excuse or meritorious defense.

For Clerks use only

MG  
MD   
Motion Seq. #  
002

Walker  
ENTER

J.S.C.  
HON. EDGAR G. WALKER

2018 MAR -7 AM 8:49  
KINGS COUNTY CLERK  
FILED

3-2-18  
D  
3-2-18

Walker  
90  
1/12/18  
Seq. 2

Present:

HON. EDGAR G. WALKER, JSC

At Part 90, ~~Room 424~~ of the Supreme Court of the State of New York, held in and for the County of Kings at 360 Adams Street, Brooklyn, New York, on the 11<sup>th</sup> day of December 2017.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

EMPIRE MERCHANTS, LLC.

Plaintiff,

-against-

10AK HAMPTONS, LLC and  
NEBYOU GUETANEH,

Defendants.

Index No.: 510280/16

EGW 90

**EMERGENCY  
ORDER TO SHOW CAUSE**

Upon the annexed Affirmation of STEVEN J. CZIK, ESQ., dated December 10, 2017, and the Affidavit of NEBYOU GUETANEH, sworn to December 10, 2017, upon all the facts, pleadings and proceedings heretofore had herein,

LET the Plaintiff or its attorney(s) show cause before one of the Judges of this Court at the Part 90, Room 424 at the Supreme Court of the State of New York, County of Kings, located at 360 Adams Street, County of Kings, Brooklyn, New York, on the 13<sup>th</sup> day of January, 2018 at 9:30 A.M., in the forenoon of that day, or as soon thereafter as counsel may be heard for a hearing on

WHY an Order should not be entered herein: a) Vacating the Default Judgment entered in this action against Defendant NEBYOU GUETANEH on March 10, 2017 herein; b) Restoring this action to the Court's calendar and for such other and further relief as this Court deems just and proper.

SUFFICIENT CAUSE THEREFORE APPEARING, IT IS HEREBY

stay  
EW  
JSC

ORDERED, that pending the hearing of this motion, any and all proceedings on the part of the Plaintiff and any and all actions of any Marshall or Sheriff of the City of New York for the enforcement of said judgment,

BE STAYED; and

Let service of a copy of this Order together with the Affidavit upon which it is predicated <sup>upon</sup> ~~via First Class Mail and Electronic Mail to~~ Richard Klass, Esq., Attorney for Plaintiff on or before December 10 2017, shall be deemed good and sufficient.

by <sup>and City Marshal</sup> Justin Crossman  
Subpersonal Service and Chase ~~Bank~~ BANK  
Enter:

EW  
\_\_\_\_\_  
JSC  
Hon. Edgar G. Walker

2018 MAR -7 AM 8:50  
FILED  
KINGS COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS  
EMPIRE MERCHANTS, LLC.

*Plaintiff,*

-against-

**Index No.: 510280/16**

**AFFIRMATION IN  
SUPPORT**

**10AK HAMPTONS, LLC and  
NEBYOU GUETANEH,**

*Defendants.*

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STEVEN J. CZIK, ESQ., hereby affirms the following under penalties of perjury:

1. I am a member of CZIK LAW PLLC, attorneys for NEBYOU GUETANEH (hereinafter "GUETANEH"), Defendant in this action, and as such am fully familiar with the facts and circumstances regarding this action.

2. This Affirmation is submitted in support of Defendant's instant Order to Show Cause seeking an Order: a) Vacating the Default Judgment obtained in this action against Defendant NEBYOU GUETANEH on March 10, 2017; b) Restoring this action to the Court's calendar and for such other and further relief as this Court may deem just and proper.

3. A Default Judgment based on non-appearance was entered against Defendant GUETANEH on March 10, 2017. However, that decision was entered solely due to Defendant's failure to appear and or submit an Answer to the Complaint in this action. (A copy of the Default Judgment entered on March 10, 2017, is annexed hereto as **Exhibit "A"**).

5. The Judgment entered against Defendant GUETANEH was only realized a few weeks ago upon MR. GUETANEH'S discovery that his bank account had been seized by a City Marshal.

6. Defendant Guetaneh, as enumerated in his annexed Affidavit, has a justifiable excuse in defaulting in this matter, as the default was caused due to the fact that he was never served with the summons and complaint in this action and not through any fault of GUETANEH.

7. Defendant GUETANEH maintains various meritorious defenses in this action, including, but not limited to, an illegible contract and incorrect amounts claimed. More significantly, GUETANEH is an improperly named party in this action that should bear no personal liability whatsoever, as any actions and or inactions alleged were perpetrated long after he resigned a principal of Defendant 10AK HAMPTONS, LLC on or about **June 30, 2014**, and as such should not subject him to any personal liability.

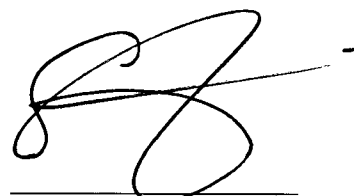
8. As such, the Default Judgment filed against GUETANEH in this action must be vacated or GUETANEH shall be seriously prejudiced through no fault of his own.

9. Plaintiff would not be prejudiced as judgment was incorrectly entered against Defendant GUETANEH.

10. **One previous application has been made for the relief sought after herein by Plaintiff ProSe, which was denied due to defective service.**

**WHEREFORE**, Defendant NEBYOU GUETANEH kindly and respectfully requests an Order vacating the Default Judgment rendered by this Court on March 10, 2017, restoring this action to the Court's trial calendar and for such other further relief as this Court may deem just and proper.

Dated: New York, New York  
December 6, 2017



Steven J. Czik, Esq.  
**CZIK LAW PLLC**  
*Attorneys for Defendant*  
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New York, New York 10013

212-413-4462

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