

At an I.A.S. Trial Term, Part ⁹⁰ 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 2nd 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 HAYES @ 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 plausible excuse or meritorious defense.

For Clerks use only

MG

MD ☒

Motion Seq. #

002

ENTER


J.S.C.

HON. EDGAR G. WALKER

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

EJV-rev 11-04

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 11th day of December 2017.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

EMPIRE MERCHANTS, LLC.

Plaintiff,

Index No.: 510280/16

-against-

**EMERGENCY
ORDER TO SHOW CAUSE**

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

Defendants.

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 19th 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 NEYOU 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 ~~via First Class Mail and Electronic Mail to~~ *upon* Richard Klass, Esq., Attorney for Plaintiff, on or before December 10 2017, shall be deemed good and sufficient.

by
Supplemental
Service
and City Marshal
Justin Grossman
and Chase Bank
Enter.

EW
JSC
Hon. Edgar G. Walker

2018 MAR -7 AM 8:50

KINGS COUNTY CLERK
FILED

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

Index No.: 510280/16

Plaintiff,

-against-

**AFFIRMATION IN
SUPPORT**

10AK HAMPTONS, LLC and
NEBYOU GUETANEH,

Defendants.

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.

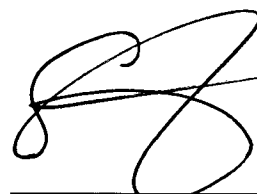
8. As such, the Default Judgment filed against GUETANEH in this action must be vacated or GUETANEH shall be seriously prejudiced through no fault of his own.

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
401 Greenwich Street
New York, New York 10013

212-413-4462

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.