

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 14

Justice

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JUANITA LOPEZ,

Plaintiff,

- v -

MAMA'S FRIED CHICKEN, INC., ABDUL BAKI

Defendant.

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INDEX NO. 154638/2018

MOTION DATE N/A

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59 were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

The motion by defendant Abdul Baki to vacate the default judgment against him is denied.

In this sexual harassment case, the individual defendant seeks to vacate a default judgment entered against him after an inquest. Mr. Baki submits an affidavit in which he claims that he never made any inappropriate comments to plaintiff. He claims that defendant was fired for giving away free food and accepting counterfeit money and this case is merely plaintiff's attempt to retaliate. Defendant claims that a default judgment was entered because counsel simply forgot to answer the amended complaint, but defendant emphasizes that an answer was filed in response to the original complaint.

In opposition, plaintiff contends that defendant willfully refused to answer the amended complaint. She insists that defendant Baki has no reasonable excuse for failing to answer the amended complaint, failing to oppose the motion for a default judgment, or failing to appear at the inquest.

The Court denies the motion. Ordinarily, this Court prefers to have cases decided on the merits. But the facts here do not show a reasonable excuse for why defendant Baki ignored this case for over a year. The timeline of this case shows that defendant Baki answered the complaint on June 23, 2018 (NYSCEF Doc. No. 2). Filing that answer meant that Baki's counsel received email notifications for every subsequent filing in this case.

Plaintiff then filed an amended complaint on July 5, 2018 (NYSCEF Doc. No. 3) and NYSCEF records show that Mr. Baki's counsel received an email notification about this filing. He also received email notifications for plaintiff's first motion for a default judgment, the decision denying that motion, plaintiff's second motion for a default judgment, the Court's decision granting the motion and ordering an inquest. Mr. Baki's counsel then received email notifications for the notice of entry for that decision, the note of issue for an inquest, and letters about the inquest.

In all, counsel for defendant Baki ignored NYSCEF Document Numbers 6-37, which were filed from September 12, 2018 to January 14, 2020 (all of this happened before the ongoing pandemic). Counsel for Baki's affirmation in support of the motion to vacate does not come close to stating a reasonable excuse for what appears to be a deliberate effort to ignore this case. The only excuse offered is that he "inadvertently failed to amend its answer" (NYSCEF Doc. No. 39, ¶ 7). But that does not explain why he failed to oppose either motion for a default judgment or make a motion to vacate once plaintiff was granted a default judgment.

Counsel for defendant Baki does not state that he wasn't receiving emails or even specifically address his pattern of ignoring this case. This is not a typical motion to vacate a default judgment where the only notice a defendant has about a case is usually the purported service of the commencing papers. Often, that service is contested. That is not the case here. In

this action, defendant’s counsel got email notifications for more than a year about the case and flat out ignored every one of them. The benefit of e-filing is that it provides easy access to every filing in a case and there is no dispute on these papers that defendant’s counsel knew or should have known exactly what was going on with this case. He offers no excuse for why he never acted on these emails.

Moreover, the Court observes that defendant only moved to vacate after plaintiff secured a damages award at an inquest. The implication from the timeline of events described above is that defendant waited until after plaintiff expended resources to secure a judgment before finally deciding to participate. The Court will not reward this type of litigation tactic. In essence, defendant wants to start the case from the beginning despite knowing about each step as it occurred. The Court declines to grant that relief.

Accordingly, it is hereby

ORDERED that the motion by defendant Baki to vacate is denied and all stays previously issued are vacated.

2/22/2021

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE