

DISTRICT COURT OF THE COUNTY OF SUFFOLK, FIRST DISTRICT

Present:

HON JAMES P. FLANAGAN  
JUDGE

Date May 19, 2008

SLOMIN'S INC.,

Plaintiff,

AGAINST

FAFART MICHEL,

Defendant.

Upon the following papers numbered 1 to 3 read on this motion to vacate default judgment  
Order to Show Cause and supporting papers 1, 2;  
Notice of Cross-Motion and supporting papers \_\_\_\_\_;  
Answering Affidavits and supporting papers 3;  
Replying Affidavits and supporting papers \_\_\_\_\_;  
Filed Papers \_\_\_\_\_; Other \_\_\_\_\_  
(and after hearing counsel in support of and opposed to the motion) it is,

**ORDERED** that this motion by the defendant for an order vacating the default judgment entered against him in this action is denied. A party seeking to vacate a default judgment under CPLR 5015(a)(1) must satisfy the Court that it has both a reasonable excuse for the default and a meritorious defense to the action. *Eugene DiLorenzo v. A.C. Dutton Lumber Co.*, 67 N.Y.2d 138, 141 (1986); *Gray v. B. R. Trucking Co.*, 59 N.Y.2d 649 (1983). The defendant's conclusory denial of service is insufficient to dispute the veracity or content of the process server's affidavit, which constitutes prima facie evidence of proper service in accordance with CPLR 308(2) (see, *Remington Investments Inc. v. Seiden*, 240 A.D.2d 647 [2d Dept 1997]). The motion is denied accordingly.

Dated: 8-8-08

James P. Flanagan  
J.D.C. #82

Decision to be published on line:  yes  no

MAILED AUG 11 2008