

DISTRICT COURT OF THE COUNTY OF SUFFOLK, FIRST DISTRICT

Present:

HON VINCENT J. MARTORANA
JUDGE

Motion Date AUGUST 24, 2015

HIGH RISE FIRE AND PROTECTION CORP.

Plaintiff

AGAINST

P.C. RICHARD & SON, LLC

Defendant

Upon the following papers numbered 1 to 11 read on this motion by defendant to vacate the default judgment
Order to show cause and supporting affirmations/affidavit 1,2,3,4 ;
Affirmation in opposition 5 ;
Filed papers Summons, complaint, affidavit of service 6
Affidavit of service of order to show cause 7 ;
Other Exhibits 8,9 Judgment 10 Transcript of judgment 11 ;

(and after hearing counsel in support of and opposed to the motion) it is,

ORDERED that this motion is denied. "A defendant seeking to vacate a default in appearing or answering must demonstrate a reasonable excuse for the default and a potentially meritorious defense to the action" (Wells Fargo Bank v. Malave, 107 AD3d 880 [2d Dept 2013]; see CPLR 5015(a)(1)) or, in the alternative, that the defendant did not receive notice of the summons in time to defend and has a meritorious defense (CPLR § 317).

Service of the summons and complaint was pursuant to Limited Liability Company Law § 303 by service on the Secretary of State of New York. Proof of service was filed with the court on March 22, 2013, and so movant was in default from April 21, 2013 (see UDCA § 402(b)). Plaintiff entered judgment on December 3, 2013. The instant motion was served on plaintiff more than a year and a half thereafter, on August 6, 2015.

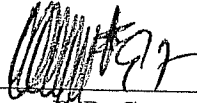
Movant received the summons and complaint in March, 2013, so it got them in time to defend, and its explanation for its default, that plaintiff never responded to its settlement offer made on May 29, 2013, does not constitute a reasonable excuse. Consequently, vacatur

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of the default judgment is inappropriate.

Dated: _____

9/10/15


S.D.C.

Order not to be published on line.

MAILED SEP 15 2015