

DISTRICT COURT OF THE COUNTY OF SUFFOLK, FIRST DISTRICT

Present:

HON PHILIP GOGLAS  
JUDGE

Motion Date MARCH 14, 2011

SLOMIN'S, INC.

Plaintiff

AGAINST

RICHARD RACCUGLIA

Defendant

Upon the following papers numbered 1 to 7 read on this motion  
by defendant to vacate the default judgment  
Order to show cause and affidavit 1,2 ;  
Affidavit in opposition 3 ;  
Filed papers Affidavit of service of summons and complaint 4  
Complaint 5 Judgment transcript 6 ;  
Other Exhibits 7 ;

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

**ORDERED** that this motion is denied. To vacate a default judgment when, as here, the basis is excusable default (CPLR 5015(a)(1)), a defendant must demonstrate that he or she has an acceptable excuse for defaulting and that he or she possesses a potentially meritorious defense to the claim. Defendant has failed to satisfy either requirement. Consequently, he has failed to establish his entitlement to vacatur of the default judgment.

The default lies in defendant's failure to serve and file an answering pleading. With respect to the default, defendant avers he "was not given a date to appear" (Affidavit in support, 2/14/2011, ¶ 5). However, the summons itself contains an explanation of when he must appear.


With respect to the existence of a potentially meritorious defense, this action is to recover for the sale of heating oil to a building, apparently defendant's home. Defendant asserts that "we expressed to the plaintiff not to 'top off' the oil tank" and that "3 or 4 deliveries were made before the first delivery was paid for" (Affidavit in support, 2/14/2011, ¶ 6), but neither of these

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allegations are a potentially meritorious defense.

The movant having failed to show an acceptable excuse for his default and the possibility of a meritorious defense, vacatur of the judgment is inappropriate.

Dated:           MAR 25 2011          

  
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J.D.C.  
**HON. PHILIP GOGLAS**

Order not to be published on line.

**MAILED**

**MAR 30 2011**