

ORIGINAL

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: ANTONIO I. BRANDVEEN
J. S. C.

COMPACT HVAC INC.,

Plaintiff,

- against -

188 RIVER ROAD LLC, MYLAR RUTNER
and JESSI SINGER,

Defendants.

TRIAL / IAS PART 31
NASSAU COUNTY

Index No. 606299/2016

Motion Sequence No. 002

The following papers having been read on this motion:

| | |
|--|----------|
| Notice of Motion, Affidavits, & Exhibits | <u>1</u> |
| Answering Affidavits | <u>2</u> |
| Replying Affidavits | _____ |
| Briefs: Plaintiff's / Petitioner's | _____ |
| Defendant's / Respondent's | _____ |

The defendants 188 River Road LLC, Mylar Rutner and Jessi Singer move for an order vacating a default judgment against them, and granting them leave to file and serve a nunc pro tunc answer. Jacob Singer, the manager of 188 River Road LLC and a codefendant states, in a supporting affidavit dated May 23, 2017, that Rutner discovered a copy of the summons and complaint on the hallway outside of one of the apartments. Jacob Singer states he is incorrectly sued here as Jessi Singer. Singer states he retained the defense attorney on May 10, 2017, for the defendants. The defendants allege the work performed by the plaintiff on a contract was shoddy and incomplete. The defendants claim four units were never installed, and there was damage done by the

plaintiff when installing 16 other units. Singer states he hired another contractor to repair and finish the installation of the four incomplete units. Singer maintains several tenants moved out, and the defendants suffered a loss of rental income. Singer asserts none of the defendants were principals to the contract nor guarantors to the agreement.

The plaintiff's attorney states, in an opposing affirmation dated June 13, 2017, service was effectuated pursuant to the Limited Liability Law § 303 on 188 River Road LLC and Rutner by serving the Secretary of State on September 13, 2016, with copies of the summons and complaint. The plaintiff's attorney points to the affidavit of service dated September 14, 2016, which is attached as an exhibit to the opposing papers. The plaintiff's attorney states, in a footnote of the affirmation, that the plaintiff was unable to serve Singer.

The plaintiff's attorney also states service was effectuated on Rutner pursuant to CPLR 308(4), after due diligent attempts, on September 13, 2016, at Rutner's usual place of abode at 683 Bedford Avenue, Brooklyn, New York 11206. The plaintiff's attorney asserts copies of the summons and complaint were properly mailed to Rutner on September 20, 2016, at Rutner's usual place of abode at 683 Bedford Avenue, Brooklyn, New York 11206. The plaintiff's attorney points to the affidavit of service dated September 20, 2016, which is attached as an exhibit to the opposing papers.

The Court determines neither 188 River Road LLC nor Rutner satisfy their respective burdens to vacate a default judgment against them, and grant them leave to file and serve a nunc pro tunc answer. The defense submissions are conclusory and unsubstantiated denials of service without the factual specificity and detail required to rebut the prima facie proof of proper service set forth in the process servers' affidavits of service (*Bd. of Managers of Foundry at Washington Park Condominium v Foundry*

Dev. Co., Inc., 111 AD3d 776, 777 [2d Dept. 2013]). The only excuses proffered is that 188 River Road LLC and Rutner were not served with process, and those allegations fail to establish a reasonable excuse for the defaults by 188 River Road LLC and Rutner. Since neither 188 River Road LLC nor Rutner provide “a reasonable excuse for the default renders it unnecessary to determine whether the moving defendants demonstrated the existence of a potentially meritorious defense [citations omitted] (*Community W. Bank, N.A. v Stephen*, 127 AD3d 1008, 1009 [2d Dept. 2015]).

ORDERED that the motion is DENIED to vacate the default judgment against 188 River Road LLC and Rutner, and to grant 188 River Road LLC and Rutner leave to file and serve a nunc pro tunc answer.

So ordered.

Dated: **August 16, 2017**

ENTER:

ENTERED

AUG 18 2017

NASSAU COUNTY
COUNTY CLERK'S OFFICE



J. S. C.

NOT FINAL DISPOSITION