

DISTRICT COURT OF THE COUNTY OF SUFFOLK, SECOND DISTRICT

Present: Hon. Garrett W. Swenson, Jr.
District Court Judge

Motion Date: May 24, 2021

Slomin's Inc.,

Plaintiff(s),

-Against-

Allina Issac,

Defendant.

Upon the following papers numbered 1 read on this
Order to Show Cause by defendant
Order to Show Cause / and supporting papers 1
Notice of Cross Motion and supporting papers _____
Answering Affidavits and supporting papers _____
Replying Affidavits and supporting papers _____
Filed papers _____; Other _____ Exhibits- _____

Defendant's application seeking an Order, [pursuant to CPLR 5015(a)(4)], vacating the within judgment on the grounds the Court lacks personal jurisdiction, is denied.

The Affidavit of Service of the Summons and Complaint alleges service of the Summons and Complaint on a suitable aged person (who either identified himself as the husband of the defendant, or was presumed to be the defendant's husband). The Affidavit of Service also alleges mailing of the Summons and Complaint to the defendant at the same address which the defendant identifies as still being her residence (see defendant Order to Show Cause, par. 2).


Defendant states that she "was never served" and couldn't have been served because she is not married. Defendant's application does not address the mailing (on June 26, 2020), of the Summons and Complaint to her residence, nor does it address the mailing of an additional copy of the Summons and Complaint to her residence on July 30, 2020, (by the plaintiff), prior to entry of the judgment.

The Court also lacks authority to award vacatur, pursuant to CPLR 5015 (a)(4), excusable default. Defendant's application does not establish the existence of a meritorious defense. Although the defendant's Affidavit claims she paid her balance of \$1,262.63 in full and that she affixes "a final invoice dated August 1, 2019", the "Account Summary" affixed by defendant to her Order to Show Cause does reflect that defendant made a payment of \$1,262.63, (credited on June 26, 2019), however, this account summary reflects subsequent charges dated after the above referenced payment, and said account summary reflects an account balance of \$218.61 as of July 1, 2019.

In addition, defendant affixes a copy of page 2 of "Bad Credit Accounts Cancelled Today" (which is also affixed to the Summons and Complaint). This shows the \$218.61 balance as of July 1, 2019, subsequent charges ("debits"), and a balance of \$724.95 due on November 2, 2019. Accordingly, defendant does not substantiate a meritorious defense to the action.

Accordingly, this application is, in all respects, denied.

Dated: June 7, 2021



Garrett W. Swenson, Jr., J.D.C. #121

Decision to be published on line ___ Yes X No

mailed 6/9/2021