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SUPREME COURT - STATE OF NEW YORK

Present:

HON. VITO M. DESTEFANO,
Justice

TRIAL/IAS, PART 11
NASSAU COUNTY

EDWARD A. RADBURN, individually and
derivatively on behalf of M S N AIR
SERVICES, INC.,

Decision and Order

Plaintiff,

-against-

MOTION SEQUENCE:06
INDEX NO.:601902-14

ROOPNARINE SINGH a/k/a RUDY SINGH,

Defendant.

The following papers and the attachments and exhibits thereto have been read on this motion:

Notice of Motion	1
Affirmation in Opposition	2
Reply Affirmation	3

In an action to recover damages for, *inter alia*, breach of contract and breach of fiduciary duty, the Defendant moves for the following relief:

“(i) pursuant to Rule 2221 of the CPLR, the Court’s Decision and Order, dated January 8, 2016 (the “Decision and Order”) and separate Order appointing a receiver dated January 8, 2016, both of which granted plaintiff’s motion to appoint a receiver despite the fact that Singh was unrepresented following a motion to withdraw by prior counsel and despite the strong public policy against the appointment of a receiver after an election is made pursuant to BCL 1118;

(ii) pursuant to CPLR 5015 and 2005 vacating the Order entered on default.”

Branch "i" of the motion for an order pursuant to CPLR 2221 seeking leave to reargue the motion which resulted in two orders of this court dated January 8, 2016, is denied.

In addition, to the extent that the Defendant seeks renewal of the motion, the request for such relief is also denied inasmuch as Defendant has failed to demonstrate how restoration of the dissolution proceeding in Queens County (Index No. 24784-09),¹ impacts the preservation of the business and assets of MSN Air Services, Inc. pending the ultimate disposition of the instant litigation.

Branch "ii" of the motion for an order, *inter alia*, pursuant to CPLR 5015 is denied inasmuch as the Defendant has failed to demonstrate the requisite "excusable default".²

According to the Defendant,

Singh's default in opposing the Radburn's motion [sic] was purely the result of an inadvertent and excusable failure on the part of an unsophisticated immigrant defendant with a lack of formal education who left on his own while motions were filed. Due to a misunderstanding of what was transpiring and the lack of counsel Singh was not capable of handling the matter on his own (Affirmation in Support at ¶ 39).

A party's pro se status alone cannot be invoked to excuse a default (*see Kanat v Ochsner*, 301 AD2d 456 [1st Dept 2003] [rejecting pro se plaintiff's contentions that he "mistakenly believed" he was not required to file opposition papers]; *Passalacqua v Banat*, 103 AD2d 769 [2d Dept 1984] [denying motion to vacate based on excusable default where movant chose not to consult with an attorney or otherwise take steps to protect his interests]; *Lounsbury v Kiehl*, 255 AD2d 774 [3d Dept 1998] [denying pro se party's motion to vacate judgment]).

Moreover, a pro se party's failure to comprehend a court's directives and deadlines will not be deemed adequate to excuse a default judgment or order (*see City of New York v Simmonds*, 172 AD2d 1081 [4th Dept 1991] [pro se not entitled to a vacated motion because they

¹ The court is unaware of either party having sought joinder of the Queens action with the instant action.

² The court notes that the instant motion for an order, *inter alia*, pursuant to CPLR 5015 was made on notice. However, a motion made pursuant to CPLR 5015 must be made by order to show cause (CPLR 5015[a] ["The court which rendered a judgment or order may relieve a party from it upon such terms as may be just, on motion of any interested person *with such notice as the court may direct*, upon the ground of . . . excusable default"]).

“were fully aware that they had to return to court on that date for trial, whether or not they had an attorney to represent them” and the “court’s directives were neither ambiguous nor confusing”]).

Counsel for the parties are directed to appear in Part 11 for a conference before the undersigned on July 21, 2016, at 9:30 a.m.

This constitutes the decision and order of the court.

DATE: June 9, 2016



Hon. Vito M. DeStefano, J.S.C.

ENTERED

JUN 13 2016

NASSAU COUNTY
COUNTY CLERK'S OFFICE