

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS:

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ISAAC AZARIA, Individually and Derivatively on behalf of :	Index No.
695 MONROE LLC :	504057/2020
Plaintiff, :	
-against- :	<u>AFFIRMATION</u>
:	<u>IN SUPPORT</u>
MICHAEL UHR, JONATHON RUBIN a/k/a :	
JONATHAN RUBIN, and 695 MONROE LLC :	
:	
Defendants. :	
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FRED L. SEEMAN, an attorney duly admitted to the practice of law in the State of New York, affirms the following under penalty of perjury:

1. I am the attorney for the Plaintiff in this action. As such, I am fully familiar with the facts and circumstances of this action as set forth below.
2. This affirmation is being submitted in support of Plaintiff’s application, pursuant to CPLR §3215, seeking a judicial dissolution and an accounting of the books and records of 659 Monroe LLC (hereinafter “695 Monroe”). This application is based upon Defendants’ failure to appear, answer or otherwise move with respect to the Summons & Complaint.

PROCEDURAL BACKGROUND

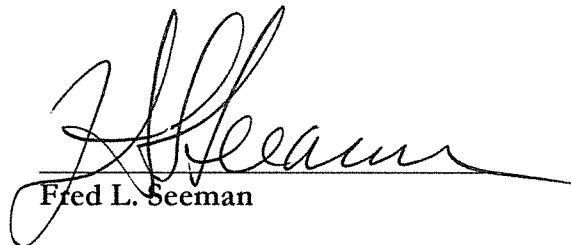
3. Plaintiff commenced this action, by Summons with Notice dated February 18, 2020. Annexed hereto as **Exhibit “A”** is a copy of the Summons with Notice.
4. A copy of the Summons with Notice was served upon the Defendants, Michael Uhr (hereinafter “Uhr”) and Jonathon Rubin a/k/a Jonathan Rubin (hereinafter “Rubin”) on March 3, 2020. Annexed hereto as **Exhibit “B”** are copies of the respective affidavits of service.
5. When 695 Monroe failed to appear and, or, demand a Complaint, Plaintiff filed a Complaint on July 10, 2020. Annexed hereto as **Exhibit “C”** is a copy of the Verified Complaint.
6. Notably, in order to bring certain claims derivatively on behalf of 695 Monroe, Plaintiff amended the caption of this action, naming 695 Monroe as a Defendant herein,.

7. In connection with the Complaint, Plaintiff filed a Notice of Pendency. Annexed hereto as **Exhibit "D"** is a copy of the Notice of Pendency.
8. On July 24, 2020, Plaintiff filed a Notice to the Court Clerk regarding the amendment to the Caption. Annexed hereto as **Exhibit "E"** is a copy of the Notice to County Clerk Amendment to Caption dated July 24, 2020.
9. Copies of the Summons with Notice, Notice of Electronic Filing, Verified Complaint, Notice of Pendency and Notice to County Clerk were served upon each of the Defendants on July 28, 2020. Annexed hereto as **Exhibit "F"** is a copy of the respective Affidavits of Service.
10. Additional copies of the Summons with Notice, Notice of Electronic Filing, Verified Complaint, Notice of Pendency and Notice to County Clerk were mailed to the Defendants on August 12, 2020. Annexed hereto as **Exhibit "G"** are copies of the respective Affirmations of Additional Mailing.
11. Finally, on October 28, 2020, the additional notice required by CPLR §3215 was duly mailed to the Defendant, 695 Monroe LLC. Annexed hereto as **Exhibit "H"** is a copy of the CPLR §3215 Notice with Affidavit of Service.
12. In March, 2020, New York City was struck by the COVID-19 pandemic, forcing the Courts to close for several months.
13. In response, New York Governor Cuomo issued a series of Executive Orders that, *inter alia*, tolled deadlines imposed by the CPLR, including the Defendants' deadline to answer or appear in this action.
14. However, by Executive Order 202.67, Governor Cuomo terminated the tolling provisions as of November 3, 2020. Annexed hereto as **Exhibit "I"** is a copy of Executive Order 202.67.
15. In other words, pursuant to CPLR §308(2), service of process upon Michael Uhr and Jonathan Rubin was completed on May 25, 2020 (i.e., ten (10) days after the affidavits of service were filed).
16. Similarly, service of process upon 697 Monroe was completed on August 23, 2020.

17. In the absence of the COVID-19 tolling provisions, the Defendants would have been required to respond to the summons and complaint thirty (30) days after service was complete. *See, CPLR §3012(c); §320(a).*
18. However, due to the COVID-19 tolling provisions, the thirty (30) day time period did not begin to run until November 4, 2020.
19. Thus, the Defendants were deemed in default as of December 4, 2020.
20. The time for the Defendants to appear, answer or move with respect to the pleadings herein has long since expired and any and all applicable tolling provisions have terminated.
21. Inasmuch as the Defendants have failed to timely appear, answer or file a motion, a default judgment should issue to Plaintiff as against the Defendants.

WHEREFORE, the Plaintiff respectfully requests that its application be granted in its entirety, together with such other and further relief as this court deems just and proper.

Dated: New York, New York
July 1, 2021



Fred L. Seeman