

DECISION AND ORDER

FILED & ENTERED

9/13/11

To commence the statutory period of appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this Order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
IAS PART, WESTCHESTER COUNTY

Present: HON. MARY H. SMITH
Supreme Court Justice

FILED
SEP 13 2011
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

-----X
FIA CARD SERVICES, NA F/K/A BANK OF AMERICA, NA,

Plaintiff,

MOTION DATE: 9/2/11
INDEX NO.: 1268/09

-against-

LETTY L. BATISTA,

Defendant.
-----X

The following papers numbered 1 to 6 were read on this motion by defendant for an Order pursuant to CPLR 5015, subdivision (a), paragraphs 1 and/or 4, and/or CPLR 317 vacating her default, etc.

Papers Numbered

- Order to Show Cause - Affidavit (Batista) - Exhs.
- (Collectively) - Supplemental Affidavit (Batista) - Exhs.
- (A-H) - Affirmation (Lane) 1-6

Upon the foregoing papers, it is Ordered that this unopposed motion¹ by defendant for an Order pursuant to CPLR 5015,

¹This Court notes that its law secretary had telephoned plaintiff's counsel, on September 12, 2011, trying to ascertain whether it had served answering papers and, after holding ten

subdivision (a), paragraphs 1 and/or 4, and/or CPLR 317 vacating her default based upon personal jurisdiction never having been conferred over said defendant is granted. The unrefuted documentary evidence submitted by defendant establishes that she did not reside at 1160 Midland Avenue, Apt. 6G, Bronxville, New York, at the time of purported nail and mail service purportedly effected on February 10, 2009. Accordingly, the Court finds that proper personal jurisdiction over defendant had not been obtained and consequently that the entered default judgment, dated June 1, 2009, must be and is hereby vacated. Further, the Income Execution, received by the Orange County Sheriff's Office On July 29, 2011, and which notably indicates defendant's current address and the address where defendant has resided since January, 2005, is hereby vacated without costs against defendants.

Dated: September 13, 2011
White Plains, New York



MARY H. SMITH
J.S.C.

minutes for an attorney to answer the call, she hung up; no follow-up call has been received by plaintiff's counsel at the time of signing this Decision and Order.

Peter Lane, Esq.
Atty. For Deft.
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