

Sunrise Capital Partners Mgt. LLC v Glattstein
2014 NY Slip Op 01994
Decided on March 25, 2014
Appellate Division, First Department
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Decided on March 25, 2014

Tom, J.P., Friedman, Sweeny, Saxe, Freedman, JJ.

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[*1] Sunrise Capital Partners Management LLC, et al., Plaintiffs-Respondents,

v

Jeff Glattstein, et al., Defendants, David McLachlan, Defendant-Appellant.

Eaton & Van Winkle LLP, New York (Robert B. Bernstein of counsel), for appellant.

Davidoff Hutcher & Citron LLP, New York (Joshua S. Krakowsky of counsel), for respondents.

Appeal from order, Supreme Court, New York County (Eileen Bransten, J.), entered October 18, 2012, which, insofar as appealed from as limited by the briefs, granted plaintiffs' motion for a default judgment as against defendant McLachlan (defendant) pursuant to CPLR 3215, deemed an appeal from judgment, same court and Justice, entered December 19, 2012, awarding plaintiffs the aggregate amount of \$512,576.51 jointly and severally against all defendants, and, so considered, said judgment unanimously affirmed, with costs.

Defendants' excuse that they did not contact outside counsel because they were relying on in-

house counsel to resolve the matter is insufficient, as they offered no facts as to how or why they believed in-house counsel was handling the matter. Moreover, defendants' excuse that they believed plaintiffs did not intend to proceed with the lawsuit is conclusory. Defendants have not alleged any statements made by plaintiffs that would indicate they were not serious about prosecuting their claim. Accordingly, defendant has failed to proffer an acceptable excuse for the default, and the Court need not determine whether a meritorious defense exists ([see e.g. *Galaxy Gen. Contr. Corp. v 2201 7th Ave. Realty LLC*, 95 AD3d 789](#) [1st Dept 2012]).

In any event, defendant's new defense is based on documents dehors the record (*see Gintell v Coleman*, 136 AD2d 515, 517 [1st Dept 1988]), is conclusory, and contradicts the offerings in defendant Satin's earlier affidavit (*see Peacock v Kalikow*, 239 AD2d 188, 190 [1st Dept 1997]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 25, 2014

CLERK