

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

DR. SPRING CHENOA COOPER,

Plaintiff,

-against-

RYAN BROEMS, CALIDADDY26,
INRISKWETRUST, and JOHN DOES 1-100,

Defendant(s).

NOTICE OF APPEAL

Index No.: 153384/2018

PLEASE TAKE NOTICE that the Plaintiff Dr. Spring Cooper, hereby appeals to the Appellate Division, First Department, from a Decision and Order of the Supreme Court of the State of New York, New York County, dated March 8, 2022 and entered March 8, 2022, from each and every portion of the aforesaid Decision and Orders. A copy of the Order is annexed hereto.

Dated: New York, New York
March 23, 2022

DANIEL SZALKIEWICZ & ASSOCIATES, PC.


By: Daniel S. Szalkiewicz, Esq.
Cali P. Madia, Esq.
Attorneys for Plaintiff
23 West 73rd Street, Suite 102
New York, New York 10023
Tel: (212) 706-1007
Fax: (914) 500-2315
daniel@lawdss.com

To: Law Office of Richard Roman Shum, Esq., PLLC, 145 Clinton St., PHA, New York,
New York 10002.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE BLUTH PART 14

Justice

-----X

DR. SPRING CHENOA COOPER,

Plaintiff,

- v -

RYAN BROEMS, CALIDADADDY26, INRISKWETRUST, JOHN
DOES

Defendants.

-----X

INDEX NO. 153384/2018

MOTION DATE 03/07/2022

MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 132, 133, 134, 135, 136

were read on this motion to/for RESTORE & VACATE.

The motion by plaintiff to vacate this Court's dismissal order is denied.

On July 14, 2021, the parties entered into a stipulation (so-ordered by this Court) regarding the outstanding discovery in this action (NYSCEF Doc. No. 127). This order set the next conference for September 15, 2021 and required the parties to upload one of three updates regarding discovery by September 8, 2021 (*id.*). The parties could upload 1) a stipulation signed by all sides, 2) a stipulation of partial agreement or 3) a letter explaining why the parties are unable to agree (*id.*). The order also noted that if nothing was uploaded for three consecutive conferences, the case would be dismissed.

For some reason, the parties ignored this directive and uploaded nothing by September 8, 2021 and so the Court adjourned the conference (NYSCEF Doc. No. 128). The Court scheduled the next conference for December 6, 2021 and required the parties to upload something regarding discovery by November 29, 2021. Yet again, the parties ignored the Court and so the

Court adjourned the conference to February 10, 2022 and set a deadline of February 3, 2022 for the parties to update the Court about the status of discovery (NYSCEF Doc. No. 130). This notice warned that the failure to upload something by February 3, 2022 would result in dismissal of the case (*id.*). That is exactly what happened here; the parties ignored the Court and so the Court dismissed the case (NYSCEF Doc. No. 131).

Plaintiff now moves to vacate that dismissal order. “As to vacating the default, a party seeking to vacate a default judgment must demonstrate both a reasonable excuse for the default and a meritorious defense” (*Aetna Life Ins. Co. v UTA of KJ Inc.*, 2022 NY Slip Op 01266 [1st Dept 2022] [citations omitted]). Shockingly, plaintiff does not bother to raise a specific reasonable excuse for ignoring three consecutive conferences. Her attorney claims he was working on the case and that defendant Broems’ intransigence caused delays in the discovery process. Of course, missing from this attempt to blame Mr. Broems is an explanation for why plaintiff ignored this Court for nearly seven months. The fact is that plaintiff ignored three consecutive conferences and the notices about these conferences contained clear warnings that ignoring conferences would eventually result in dismissal.

Even more curious is that plaintiff made the instant motion only a few days after receiving the Court’s dismissal order. Clearly, plaintiff’s counsel was receiving the Court’s notices over the last few months (plaintiff does not contest this point in the moving papers) and deliberately ignored these notices. Plaintiff could have simply sent a letter to the Court complaining about Mr. Broems’ alleged refusal to cooperate in discovery. But she did not; instead, her attorney decided to do what he wanted to do.

To the extent that counsel for plaintiff cites law office failure, the Court finds that reason to be insufficient particularly because counsel for plaintiff’s explanation of his law office failure

bizarrely blames Mr. Broems (NYSCEF Doc. No. 133, ¶ 39). He does not give a reason for why he was unable to spend five minutes to draft and upload an update about discovery. And counsel for plaintiff insists he has been diligently litigating this case, a strange contention given that this Court has heard nothing from plaintiff for seven months. Without a sufficient reason for ignoring three consecutive conferences, there is no reason to vacate the Court's dismissal order (*Langomas v City of New York*, 152 NYS3d 802, 2021 NY SlipOp 05776 [1st Dept 2021] [affirming the denial of a motion to vacate where plaintiff failed to appear for multiple conferences]).

The Court also observes that counsel for plaintiff did not attach anything from plaintiff in connection with this motion; of course, plaintiff cannot establish a meritorious case without submitting anything from plaintiff. The only exhibits attached to this motion are the order dismissing this case, a transcript from Mr. Broems' criminal proceeding and an email between attorneys about discovery.

Accordingly, it is hereby

ORDERED that the motion by plaintiff to vacate this Court's dismissal order and to restore this action is denied.

3/8/2022
DATE

CHECK ONE:

☒

CASE DISPOSED

☐

GRANTED

☒

DENIED

APPLICATION:

☐

SETTLE ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☐

NON-FINAL DISPOSITION

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GRANTED IN PART

☐

OTHER

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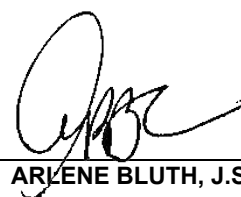
SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE



ARLENE BLUTH, J.S.C.

Supreme Court of the State of New York

Appellate Division: First • Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.		For Court of Original Instance	
DR. SPRING CHENOA COOPER <div style="text-align: center;">- against -</div> RYAN BROEMS, CALIDADDY26, INRISKWETRUST, and JOHN DOES 1-100		Date Notice of Appeal Filed	
For Appellate Division			
Case Type		Filing Type	
<input checked="" type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration <input type="checkbox"/> Action Commenced under CPLR 214-g	<input type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding	<input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Original Proceedings <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Labor Law 220 or 220-b <input type="checkbox"/> Public Officers Law § 36 <input type="checkbox"/> Real Property Tax Law § 1278	<input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Executive Law § 298 <input type="checkbox"/> CPLR 5704 Review
Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.			
<input type="checkbox"/> Administrative Review	<input type="checkbox"/> Business Relationships	<input type="checkbox"/> Commercial	<input type="checkbox"/> Contracts
<input type="checkbox"/> Declaratory Judgment	<input type="checkbox"/> Domestic Relations	<input type="checkbox"/> Election Law	<input type="checkbox"/> Estate Matters
<input type="checkbox"/> Family Court	<input type="checkbox"/> Mortgage Foreclosure	<input type="checkbox"/> Miscellaneous	<input type="checkbox"/> Prisoner Discipline & Parole
<input type="checkbox"/> Real Property (other than foreclosure)	<input type="checkbox"/> Statutory	<input type="checkbox"/> Taxation	<input checked="" type="checkbox"/> Torts

Informational Statement - Civil

Appeal			
Paper Appealed From (Check one only):		If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.	
<input type="checkbox"/> Amended Decree <input type="checkbox"/> Amended Judgement <input type="checkbox"/> Amended Order <input type="checkbox"/> Decision <input type="checkbox"/> Decree	<input type="checkbox"/> Determination <input type="checkbox"/> Finding <input type="checkbox"/> Interlocutory Decree <input type="checkbox"/> Interlocutory Judgment <input type="checkbox"/> Judgment	<input checked="" type="checkbox"/> Order <input type="checkbox"/> Order & Judgment <input type="checkbox"/> Partial Decree <input type="checkbox"/> Resettled Decree <input type="checkbox"/> Resettled Judgment	<input type="checkbox"/> Resettled Order <input type="checkbox"/> Ruling <input type="checkbox"/> Other (specify):
Court: Supreme Court ▼		County: New York ▼	
Dated: March 8, 2022		Entered: March 8, 2022	
Judge (name in full): Arlene Bluth		Index No.: 153384/2018	
Stage: <input type="checkbox"/> Interlocutory <input checked="" type="checkbox"/> Final <input type="checkbox"/> Post-Final		Trial: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes: <input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury	
Prior Unperfected Appeal and Related Case Information			
Are any appeals arising in the same action or proceeding currently pending in the court? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If Yes, please set forth the Appellate Division Case Number assigned to each such appeal. Yes, filed simultaneously with this notice of appeal. Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:			
Original Proceeding			
Commenced by: <input type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus			Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:			
Proceeding Transferred Pursuant to CPLR 7804(g)			
Court: Choose Court ▼		County: Choose County	
Judge (name in full):		Order of Transfer Date:	
CPLR 5704 Review of Ex Parte Order:			
Court: Choose Court ▼		County: Choose County	
Judge (name in full):		Dated:	
Description of Appeal, Proceeding or Application and Statement of Issues			
Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed. This appeal is from the non-motion order dismissing the case, the denial of Plaintiff's unopposed motion to vacate the order of dismissal, and the denial of Plaintiff's unopposed motion to renew and reargue the denial of the motion to vacate.			

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

The issues on appeal is whether the court should have reinstate the action when Plaintiff filed a motion to vacate the order of dismissal 10 days after its issuance. The Court should have found that a reasonable excuse for a default was presented and that Plaintiff had a meritorious cause of action based on Defendant's recent plea of guilty to criminal charges that were the basis of the Supreme Court action. Additionally, Plaintiff was not in default of a court order that warranted dismissal, and the case should have been reinstated in the interest of justice.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	DR. SPRING CHENOA COOPER	Plaintiff	Appellant
2	RYAN BROEMS	Defendant	Respondent
3	CALIDADDY26	Defendant	None
4	INRISKWETRUST	Defendant	None
5	JOHN DOES 1-100	Defendant	None
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Informational Statement - Civil

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Daniel Szalkiewicz & Associates, P.C.

Address: 23 West 73rd Street, Suite 102

City: New York

State: NY

Zip: 10023

Telephone No: 212 706 1007

E-mail Address: daniel@lawdss.com

Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 1

Attorney/Firm Name: Law Office of Richard Roman Shum, Esq., PLLC

Address: 145 Clinton St., PHA

City: New York

State: NY

Zip: 10002

Telephone No: (646) 259-3416

E-mail Address: richard@romanshum.com

Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 2

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No:

E-mail Address:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

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Zip:

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Informational Statement - Civil