

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARCO CRIOLLO,

Plaintiff,

MEMORANDUM & ORDER

19-CV-5794 (EK) (CLP)

-against-

NY FINE INTERIORS INC.,
et al.,

Defendants.

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ERIC KOMITEE, United States District Judge:

The Court has received Magistrate Judge Pollak's Report and Recommendation (R&R) dated March 3, 2021. ECF No. 54. Judge Pollak recommends that I deny Plaintiff's motion for default judgment and set aside the notation of default. Neither party has filed objections and the time to do so has expired. Accordingly, the Court reviews the R&R for clear error on the face of the record. See Advisory Comm. Notes to Fed. R. Civ. P. 72(b); accord *Gesualdi v. Mack Excavation & Trailer Serv., Inc.*, No. 09-CV-2502, 2010 WL 985294, at *1 (E.D.N.Y. Mar. 15, 2010).

In determining whether to relieve a party of a default, courts consider whether the default was willful, whether setting it aside would prejudice the adversary, and whether a meritorious defense has been presented. *Enron Oil Corp. v. Diakuhara*, 10 F.3d 90, 96 (2d Cir. 1993); *Meehan v.*

Snow, 652 F.2d 274, 277 (2d Cir. 1981). Judge Pollak concluded as follows: (1) Service upon both corporate defendants and Mr. Cejnog was proper. ECF No. 54 at 20. (2) The Defendants' dilatory conduct - namely, failing to file an answer or motion following service of process - does not rise to the level of willfulness to warrant a default judgment, given that they "responded promptly" after receiving the motion for default judgment. *Id.*; see also *In re FKF 3, LLC*, 501 B.R. 491, 502 (S.D.N.Y. 2013). (3) There is at least one ground upon which Defendants have suggested a potentially meritorious defense. *Id.* at 22. (4) Plaintiff has not asserted that setting aside the default would result in the loss of evidence or create increased difficulties for discovery, or that witnesses or evidence have been lost during the consideration of this motion, so as to constitute undue prejudice. *Id.* at 22-23.

Having reviewed the record, I find no clear error.

Accordingly, I adopt the R&R in its entirety pursuant to 28 U.S.C. § 636(b) (1). Plaintiff's motion for default judgment is denied, and the default is set aside for good cause. Defendants have fourteen days from the date of this Order to file an answer to the Complaint.

SO ORDERED.

/s Eric Komitee

ERIC KOMITEE

United States District Judge

Dated: March 30, 2021
Brooklyn, New York