



**CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: PART 119**

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ESGRO CAPITAL MANAGEMENT, LLC  
as SUCCESSOR IN INTEREST TO TAYLOR  
BUSINESS INSTITUTE,

Index No.: CV-044262-12/NY

Plaintiff,

**DECISION/ORDER**

-against-

Present:  
**Matthew P. Raso**  
Judge, Civil Court

SHARAE BANKS,

Defendant.

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Recitation as Required by CPLR §2219(a): The following papers  
were read on this Order to Show Cause to Vacate a Default Judgment:

Papers Numbered

Defendant's Order to Show Cause, Affirmation in Support, and Exhibits .....	<u>1</u>
Plaintiff's Affirmation in Opposition with Exhibits.....	<u>2</u>
Defendant's Reply Affidavit in Support with Exhibits .....	<u>3</u>

Upon the foregoing cited papers, the Decision/Order of this Court is as follows:

Order to show cause by defendant, SHARAE BANKS ("movant"), seeking to vacate a default judgment entered on April 25, 2013 and to dismiss the complaint based on lack of personal jurisdiction is denied.

In the affidavit in support of the motion, movant admits that she first learned of the judgment in 2016 through a letter from plaintiff's attorneys stating that movant's wages would be garnished. However, movant alleges that she did not know what steps could be taken to vacate the judgment until recently. The remainder of movant's affidavit challenges plaintiff's affidavit of service of the summons and complaint. In opposition, plaintiff submits evidence establishing that it had been receiving payments on the judgment via garnishment of plaintiff's wages from October 30, 2017 through September of 2020 (almost three years) until the instant Order to Show Cause was filed and a temporary stay on judgment enforcement was ordered. In her affidavit in reply, movant reiterates her challenge to the affidavit of service, bolsters her arguments relating to meritorious defenses, and repeats the argument that while she was being garnished for three years, she did not know that she could attempt to vacate the default judgment until recently. In the reply



affidavit movant also confirms that she's been aware of the actual garnishment of her wages by this plaintiff, since 2017.

A court's discretionary power under CPLR 5015 (a) to relieve a party from a judgment should not be exercised where, "the moving party has demonstrated a lack of good faith, or been dilatory in asserting its rights" (*Greenwich Sav. Bank v JAJ Carpet Mart*, 126 AD2d 451, 452 [1<sup>st</sup> Dep't., 1987]). Whatever merit there is to movant's lack of personal jurisdiction argument, the motion fails nonetheless because movant, "has waived any objection to the court's jurisdiction by making payments on the deficiency judgment under the wage garnishment order for over a year before bringing this motion to vacate" (*Calderock Joint Ventures, L.P. v. Mitiku*, 45 A.D.3d 452 [1<sup>st</sup> Dep't., 2007]). Therefore, the Court finds that because movant has known about the garnishment for almost three years and failed to act during that time, any objection to jurisdiction has been waived.

It appears the movant requests that the Court not consider the three years' worth of garnishments because movant did not understand how to challenge the judgment until recently. However, while the Court is empathetic to movant's position, there is no legal support for the contention that one's unfamiliarity with the law would nullify a judgment debtor's waiver of objection to the jurisdiction as set forth by *Calderock*, supra.<sup>1</sup>

Based on the foregoing, the motion is denied in its entirety. All stays on the enforcement of the judgment are hereby vacated and lifted.

This constitutes the decision and order of the Court.

Dated: December 7, 2020  
New York, New York

  
MATTHEW P. RASO, J.C.C.

Hon. Matthew P. Raso  
Judge, Civil Court

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<sup>1</sup> The Court notes that while movant is self-represented, movant's initial affidavit in support of the motion and reply were drafted with the assistance of attorneys from The New Economy Project and that movant had the assistance of the Court's Volunteer Attorney for the Day Program on December 7, 2020.