SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. PHAEDRA F. PERRY-BOND** **PART** **35**

Justice

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SGRC 353 LLC,

Plaintiff,

- v -

OCCUPATIONAL THERAPY & SOCIAL WORK ASSOCIATES, PLLC D/B/A THERAPLAY, JARED MITCHELL, KIMBERLY MITCHELL

Defendant.

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INDEX NO. 156611/2025

MOTION DATE 03/05/2026, 03/10/2026

MOTION SEQ. NO. 002 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 34, 35, 36, 37, 38, 39, 40, 41, 46, 49, 50, 51

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 42, 43, 44, 45, 47, 48

were read on this motion to/for JUDGMENT - MONEY.

Upon the foregoing documents, motion sequence 002 and 003 are consolidated for disposition. Upon consolidation, Defendants Jared Mitchell and Kimberly Mitchell (the "Guarantors") motion to vacate the default judgment ("Mot. Seq. 002") entered against them on January 8, 2026 is denied. Plaintiff's motion for attorneys' fees ("Mot. Seq. 003") is granted.

This is an action by Plaintiff to recover rental arrears from Defendants pursuant to lease and guaranty agreements. Plaintiff filed the summons and complaint on May 21, 2025. On August 5, 2025, after Defendants failed to appear, Plaintiff moved for default judgment. In a decision and order dated January 8, 2026, the Court granted Plaintiff's motion for default judgment. On March 5, 2026, Defendants moved to vacate their default.

According to Defendants they received the pleadings in August of 2025, after which they called an attorney, Stuart Serota, Esq. Defendants claim they discussed the case with Mr. Serota,

sent him the complaint, discussed a potential resolution of the lawsuit, and were advised by Mr. Serota that he would "help handle the matter." Defendants state they learned of the default judgment on January 27, 2026, at which time they immediately contacted Mr. Serota. Allegedly, Mr. Serota responded with "so what" and told Defendants to consult a different attorney. The Guarantors subsequently retained their current attorney and filed this motion to vacate.

The Guarantors' motion to vacate their default judgment is denied. To obtain vacatur under CPLR 5015, a movant must demonstrate a reasonable excuse for the default and a meritorious defense. The Court finds Guarantors failed to demonstrate a reasonable excuse for their default. It is well established that a parties' failure to maintain regular contact with their attorney during the pendency of an action does not constitute a reasonable excuse (*see Cusumano v Riley Land Surveyors, LLP*, 179 AD3d 593, 594 [1st Dept 2020]; *Higgins v Williams*, 178 AD3d 530, 530 [1st Dept 2019] citing *Sheikh v New York City Tr. Auth.*, 258 AD2d 347, 348 [1st Dept 1999]).

Guarantors state they spoke with their prior attorney, Mr. Serota, on one occasion in August of 2025, but apparently took no steps to learn of the status of this lawsuit again until after default judgment had been entered in January of 2026. On the other hand, they state that on prior occasions when Mr. Serota was retained, "[h]e always got back to me with a status update" (NYSCEF Doc. 35 at ¶ 9). Guarantor's admitted failure to follow up with their attorney to stay apprised of the status of their case does not constitute a reasonable excuse under CPLR 5015 (*see also G Builders IX, LLC v Eden Ballroom, LLC*, --- N.Y.S.3d ----, 2026 N.Y. Slip Op. 03387 at *1 [1st Dept 2026]; *Tenamaza v Knickerbocker Const. II, LLC*, 96 AD3d 562 [1st Dept 2012]).

Moreover, Guarantors do not produce proof they retained Mr. Serota. There is no evidence of a retainer agreement, no evidence of any payments made to Mr. Serota, nor is there evidence of any written communication between Guarantors and Mr. Serota. An unsubstantiated and

conclusory claim that Guarantors relied on Mr. Serota to respond to the complaint without evidence that Mr. Serota was even retained is insufficient to establish a reasonable excuse (*see Golden Integrity, Inc. v Azog, Inc.*, 234 AD3d 574, 574-575 [1st Dept 2025]; *Liu v Chang*, 227 AD3d 410 [1st Dept 2024]). And even if there was substantiating evidence demonstrating Mr. Serota was retained to defend this matter, "bare allegations of incompetence on the part of prior counsel cannot serve as the basis to set aside a default pursuant to CPLR 5015" (*see Youni Gems Corp. v Bassco Creations Inc.*, 70 AD3d 454 [1st Dept 2010] quoting *Spatz v Bajramoski*, 214 AD2d 436, 436 [1st Dept 1995]). Given Guarantors' failure to provide a reasonable excuse for their default, the Court need not address whether they have demonstrated a meritorious defense (*see Galaxy Gen. Contr. Corp. v 2201 7th Ave. Realty LLC*, 95 AD3d 789, 790 [1st Dept 2012]).

However, for the sake of thoroughness, the Court finds Guarantors have not demonstrated a meritorious defense. The guaranty agreement explicitly lists the conditions which must be complied with on the vacate date for guarantors' obligations to be limited (*see* NYSCEF Doc. 40). One of those requirements is that prior to the date the leased premises were vacated, Guarantors must pay "to Owner, except to the extent previously paid by Tenant … amounts equal to the Guaranteed Obligations to and including the Vacate Date." The premises were vacated on July 31, 2022, but the undisputed rent ledger at that time reflects at least $33,171.45 in rental arrears was due and owing (NYSCEF Doc. 17). There is no evidence proffered by Guarantors disputing the $33,171.45 in outstanding arrears on the vacate date, nor is there any evidence that Guarantors made any payments to satisfy the $33,171.45 prior to or on the vacate date, which was a prerequisite for being relieved of obligations under the guaranty.

Guarantors' reliance on *1995 CAM LLC v. West Side Advisors, LLC* 45 N.Y.3d 150 (2025) is misplaced, because the guaranty in that case did not contain a language stating that to be relieved

of liability for a tenant's future obligations all rent on the date of vacatur had to be paid. Instead, the guaranty in *1995 CAM LLC* read "Guarantor guarantees to Owner, its successors and assigns, that he shall pay to Owner when due, all basic annual rent … payable by Tenant under the Lease …to the date that is the latest date that Tenant and its assigns, licensees and sublessees, if any, [] shall have completely vacated and surrendered the Demised Premises to Owner." Thus, the guarantor in *1995 CAM LLC* was relieved of post-vacatur liability because he promised only to pay amounts owed by the tenant up to the latest date that the tenant vacated and surrendered the premises. However, the guaranty here states liability for post-vacatur rent is alleviated only on the condition that all rent owed up to the date of vacatur has been paid. Since rent was owed on the date of vacatur and remained unpaid, Guarantors failed to fulfill a condition precedent to limiting their obligations for post-vacatur rent. Based on Guarantors' failure to present a reasonable excuse for the default and a meritorious defense to the amounts owed, the motion to vacate is denied.

Plaintiff's motion for attorneys' fees is granted. Plaintiff's rates are reasonable for an experienced commercial real estate litigator and a paralegal/legal intern at a commercial real estate firm in New York County, and the hours expended in preparing the summons and complaint, effectuating service, and preparing a detailed default judgment motion are likewise reasonable. Further, Defendants agreed that in any action to enforce the guaranty, Plaintiff "shall be entitled to attorneys' fees and disbursements in connection therewith" and in the event of default under the lease plaintiff "shall be entitled to all of its costs and reasonable attorneys' fees incurred by [Plaintiff] as a result of such default." This broad wording allows for the collection of fees incurred in preparing the fee application (*see, e.g. Turner Towers Tenant Corp. v Francois*, 233 AD3d 501, 502-503 [1st Dept 2024]). The Court has considered the remainder of the parties' contentions and finds them unavailing.

Accordingly, it is hereby,

ORDERED that Defendants Jared Mitchell and Kimberly Mitchell's motion to vacate the default judgment entered against them on January 8, 2026 is denied; and it is further

ORDERED that Plaintiff's motion for attorneys' fees is granted; and it is further

ORDERED that upon the submission of proper papers by counsel for Plaintiff to the County Clerk, the Clerk of the Court is directed to enter an additional money judgment in favor of Plaintiff SGRC 353 LLC and against Defendants OCCUPATIONAL THERAPY & SOCIAL WORK ASSOCIATES, PLLC D/B/A THERAPLAY, JARED MITCHELL, KIMBERLY MITCHELL, jointly and severally, in the amount of $ 8,323.07; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

6/29/26
DATE

HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:	[x]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[ ] DENIED	[x]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE