202 A.D.3d 578
Supreme Court, Appellate Division, First Department, New York.

PERLBINDER HOLDINGS LLC, Plaintiff–Respondent,

v.

Himansu H. PATEL et al., Defendants–Appellants.

15326

Index No. 655236/19

Case No. 2020–04287

ENTERED February 17, 2022

Attorneys and Law Firms

Michael R. Curran, Flushing, for appellants.

Kaufman Friedman Plotnicki & Grun, LLP, New York (Howard Grun of counsel), for respondent.

Manzanet–Daniels, J.P., Gische, Mazzarelli, Friedman, Mendez, JJ.

Opinion

Judgment, Supreme Court, New York County (Tanya R. Kennedy, J.), entered August 12, 2020, in plaintiff's favor, and appeal therefrom bringing up for review an order, same court and Justice, entered July 7, 2020, which granted plaintiff's motion for summary judgment in lieu of complaint and denied defendants' cross motion to dismiss, consolidate, or convert the action, unanimously affirmed, with costs.

The affidavits of service constituted prima facie evidence of proper service, and defendants' submissions in opposition were insufficient to rebut the presumption of proper service created thereby (*see generally Ocwen Loan Servicing, LLC v. Ali,* 180 A.D.3d 591, 119 N.Y.S.3d 474 [1st Dept. 2020], *lv dismissed* 36 N.Y.3d 1046, 140 N.Y.S.3d 477, 164 N.E.3d 283 [2021]). Because defendant Akash H. Patel (s/h/a Akash H. Patel) failed to notify the Department of Motor Vehicles of his change of address, as required by Vehicle and Traffic Law § 505(5), he is estopped from challenging service at his former address (*see Stillman v. City of New York,* 39 A.D.3d 301, 303, 834 N.Y.S.2d 115 [1st Dept. 2007]; *Kandov v. Gondal,* 11 A.D.3d 516, 783 N.Y.S.2d 57 [2d Dept. 2004]). Although defendants Himansu H. Patel and Harshad S. Patel averred that the person who purportedly received service on their behalf, "Hakash Patel, Brother," did not exist, they did not address the likelihood that the person who received service was Akash, who matched the description given by the process server. While the out-of-state affidavits lack the required certificates of conformity, this technical defect, which could easily have been corrected, should not be considered because it was not timely raised (*see* CPLR 2309[c]; *Midfirst Bank v. Agho,* 121 A.D.3d 343, 348–352, 991 N.Y.S.2d 623 [2d Dept. 2014]).

This case, which is based on an instrument for the payment of money only, i.e., a promissory note, was properly brought pursuant to CPLR 3213. Defendants' request for consolidation with a related action (***676** *Perlbinder Holdings LLC v. Patel,* index No. 655248/19) is moot in view of the disposition of both actions.

New York
Official Reports

11 A.D.3d 516, 783 N.Y.S.2d 57, 2004 N.Y. Slip Op. 07286

*1 Yury Kandov, Respondent

v

Sikander Ali Gondal, Defendant, and Dennis Lee, Appellant.

Supreme Court, Appellate Division, Second Department, New York
2003-10732, 9287/98
October 12, 2004

CITE TITLE AS: Kandov v Gondal

HEADNOTE

Judgments
Default Judgment
Vacatur

In personal injury action, defendant was not entitled to vacatur of judgment entered against him after inquest on damages upon his default in appearing and answering; he was estopped from raising claim of defective service because he failed to apprise Department of Motor Vehicles of his current address (***see*** Vehicle and Traffic Law § 505 [5]).

In an action, inter alia, to recover damages for personal injuries, the defendant Dennis Lee appeals, as limited by his brief, from so much of an order of the Supreme Court, Kings County (Jones, J.), dated October 30, 2003, as denied his motion to vacate so much of a judgment, as, after an inquest on damages upon his default in appearing and answering, is in favor of the plaintiff and against him in the principal sum of $125,000.

Ordered that the order is affirmed insofar as appealed from, with costs.

The defendant Dennis Lee (hereinafter the defendant) moved to vacate a judgment entered against him after an inquest on damages upon his default in appearing and answering. The defendant claimed a lack of personal jurisdiction (*see* CPLR 5015 [a] [4]). The defendant was served at the address which was on file for him at the State of New York Department of Motor Vehicles (hereinafter the DMV). Vehicle and Traffic Law § 505 (5) requires that every motor vehicle licensee notify the Commissioner of Motor Vehicles of any change in residence within 10 days of the change. A party who fails to comply with this provision will be estopped from challenging the propriety of service made at the former address (*see Choudhry v Edward*, 300 AD2d 529, 530 [2002]; *Traore v Nelson*, 277 AD2d 443, 444 [2000]; *Pumarejo-Garcia v McDonough*, 242 AD2d 374, 375 [1997]; *Sherrill v Pettiford*, 172 AD2d 512, 513 [1991]). In this case, the only excuse proffered by the defendant for his default was that on the date of service he no longer resided at the address where service was made, the very address he continues to list with the DMV. Similarly, he contended that the Supreme Court did not have *2 personal jurisdiction over him because he did not receive service (*see* CPLR 5105 [a] [4]). As the defendant was estopped from raising a claim of defective service because

he failed to apprise the DMV of his current address (*see Traore v Nelson, supra*), the Supreme Court providently exercised its discretion in denying his motion to vacate.

The defendant's remaining contentions are without merit. Smith, J.P., Adams, Crane and Lifson, JJ., concur.

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All Citations

202 A.D.3d 578, 159 N.Y.S.3d 675 (Mem), 2022 N.Y. Slip Op. 01106

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