

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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SAMUEL, SON & CO. (USA) INC.  
d/b/a ROLL FORM GROUP

Plaintiff,

v.

SIMPSON & BROWN, INC.

Defendant.

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**ATTORNEY  
AFFIRMATION**

Index No.: 801838/2020

I, Kristine N. Celeste, make this affirmation under penalty of perjury pursuant to CPLR § 2106 and declare the following to be true:

1. I am an attorney at law duly admitted to practice in the State of New York with the law firm of Duke Holzman Photiadis & Gresens LLP, attorneys for Plaintiff Samuel, Son & Co. (USA) Inc. d/b/a Roll Form Group (“Plaintiff” or “Samuel”) in the above-captioned matter, and am fully familiar with the facts set forth herein.

2. I submit this affirmation in opposition to Defendant Simpson & Brown, Inc.’s (“Simpson” or “Defendant”) Order to Show Cause seeking vacatur of the default order entered on April 8, 2021 and default judgment signed and filed on April 9, 2021 (the “Default Order and Judgment”).

3. This Court should deny Defendant’s application in its entirety because process was properly served on Defendant. As such, this Court has jurisdiction over Defendant and Defendant has failed to establish excusable neglect to warrant vacatur of the Default Order and Judgment.

4. On February 7, 2020, Plaintiff initiated the instant action via the filing of a summons and complaint (the “Summons & Complaint”). Annexed hereto as **Exhibit A** is a true and accurate copy of the Summons & Complaint.

5. Following filing of the Summons and Complaint, Plaintiff engaged the company Action Subpoena to serve process on Defendant.

6. On February 21, 2020, Plaintiff served Defendant via personal service by Todd Bank at Defendant's offices in Cranford, New Jersey. Annexed hereto as **Exhibit B** is a true and accurate copy of the affidavit of service for the Summons & Complaint.

7. On February 24, 2020, Plaintiff mailed the second service letter to Defendant's offices in Cranford, New Jersey pursuant to CPLR § 3215(g). Annexed hereto as **Exhibit C** is a true and accurate copy of the affidavit of service for the CPLR § 3215(g) second service letter.

8. Defendant defaulted by failing to answer the Summons and Complaint or otherwise appear in the instant action since at least March 15, 2020.

9. On February 9, 2021, Plaintiff moved for a default judgment to be entered against Defendant by filing a Notice of Motion, Affirmation and Proposed Order and Judgment (the "Motion Papers").

10. On February 10, 2021, Plaintiff mailed a copy of the Motion Papers to Defendant's offices in Cranford, New Jersey, together with correspondence notifying Defendant that the motion was returnable on April 8, 2021. Annexed hereto as **Exhibit D** and **Exhibit E**, respectively, are true and accurate copies of the affidavit of mailing for the Motion Papers and counsel's letter notifying Defendant of the motion's return date.

11. On April 8, 2021, this Court entered an Order and Judgment granting Plaintiff judgment by default against Defendant.

12. On April 9, 2021, the Statement of Judgment against Defendant was filed in the Erie County Clerk's Office.

13. On April 12, 2021, Plaintiff mailed a copy of the notices of entry of the Default Order and Judgment to Defendant's offices in Cranford, New Jersey. Annexed hereto as **Exhibit F** is a true and accurate copy of the affidavit of mailing for the notices of entry of the Default Order and Judgment.

14. Based on the above, Plaintiff properly served Defendant with process and provided additional notice of the instant action by no less than three separate mailings to the Defendant between February 2020 and April 2021. Accordingly, this Court has jurisdiction over Defendant and Defendant has failed to establish excusable neglect sufficient to warrant vacatur of the Default Order and Judgment.

15. WHEREFORE, Samuel respectfully requests that: (1) Defendant's application for vacatur of the default judgment be DENIED in its entirety or, in the alternative, that the default judgment be upheld in part as to the principal amount due and owing to Samuel; (2) in the event the Court determines that a question of fact exists concerning the validity of service upon Defendant that an evidentiary hearing be scheduled by the Court; (3) the temporary restraining order granted pursuant to the Court's Order to Show Cause dated July 15, 2021 [Doc. No. 57] be dissolved in its entirety; (4) Defendant's Motion to Dismiss pursuant to CPLR § 3211(a)(8) be denied; and (5) the Court grant such further and other relief as the Court deems just and proper.

Dated: Buffalo, New York  
July 22, 2021

/s/ Kristine N. Celeste  
Kristine N. Celeste, Esq.