

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,

Index No.: 801838/2020

-against-

SIMPSON & BROWN GROUP, INC.

Defendant.

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**AFFIRMATION OF ROBERT C. CARBONE**

ROBERT C. CARBONE, an attorney duly admitted to practice law in the State of New York, pursuant to CPLR Rule 2106, affirms under penalty of perjury:

1. I am an attorney associated with the law firm Duke Holzman Photiadis & Gresens, LLP, attorneys for Plaintiff, Samuel, Son & Co. (USA) Inc. d/b/a Roll Form Group (“Samuel”), in the within action and, as such, I am fully familiar with the facts and circumstances set forth herein and I am competent to testify as to these matters.

2. I submit this Affirmation in Opposition to Defendant’s Order to Show Cause Seeking (I) Vacatur of Default Judgment and (II) Dismissal of Complaint.

3. Upon information and belief, Defendant, Simpson & Brown Group, Inc., is a foreign business corporation organized and existing under the laws of New Jersey that is authorized to do business in New York State. A true and correct report of from the New York Department of State’s web site concerning Defendant’s entity status is attached herewith and made a part hereof as **Exhibit A**.

4. A true and correct excerpt from a LinkedIn web site associated with a person named Whitney Fox identified as an employee of Defendant is attached herewith and made a part hereof as **Exhibit B**. Exhibit B was accessed and captured on July 19, 2021.

5. A true and correct copy of Executive Order 107 signed on March 21, 2020 by Governor Philip D. Murphy of the State of New Jersey is attached herewith and made a part hereof as **Exhibit C**. Paragraphs 2 and 26 of the Exhibit C implement the stay-at-home order in New Jersey effective as of 9:00pm on March 21, 2020 that led to business closures.

6. 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 Plaintiff; (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/ Robert C. Carbone  
Robert C. Carbone