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Supreme Court, Appellate Division, Second
Department, New York.

Catherine BURKE, Respondent,
v.
ZORBA DINER, INC., Defendant,
Nick Caino, Appellant.

March 27, 1995.

Plaintiff brought personal injury action against defendant to recover for injury sustained when plaintiff was allegedly hit in head by chair thrown by defendant. The Supreme Court, Putnam County, Hickman, J., granted plaintiff's motion to dismiss defendant's affirmative defense of lack of personal jurisdiction, and defendant appealed. The Supreme Court, Appellate Division, held that defendant failed to notify Commissioner of Motor Vehicles of his change of address and, therefore, defendant was estopped from contesting validity of service to his former address.

Affirmed.

West Headnotes

[1] Process ⇨166
313k166

Party who fails to comply with statute requiring every motor vehicle licensee to notify Commissioner of Motor Vehicles of any change of residence within ten days of occurrence of change is estopped from challenging propriety of service of process which is made to former address. McKinney's Vehicle and Traffic Law § 505, subd. 5.

[2] Process ⇨61
313k61

By failing to properly change his address with Commissioner of Motor Vehicles, defendant affirmatively misrepresented his address and plaintiff had every right to rely upon that misrepresentation in effecting service of process. McKinney's CPLR 308, subd. 2; McKinney's Vehicle and Traffic Law § 505, subd. 5.

**932 Stockfield & Fixler, Carmel (Robert W. Folchetti, of counsel), for appellant.

Moloney & Anker, White Plains (Kevin D. Moloney and John A. Wieder, on the brief), for respondent.

Before SULLIVAN, J.P., and MILLER,
COPERTINO, JOY and FRIEDMANN, JJ.

*577 MEMORANDUM BY THE COURT.

In an *578 action to recover damages for personal injuries, the defendant Nick Caino appeals, as limited by his brief, from so much of an order of the Supreme Court, Putnam County (Hickman, J.), dated October 19, 1993, as granted the plaintiff's motion to dismiss his affirmative defense of lack of personal jurisdiction and denied his cross motion to dismiss the complaint for lack of personal jurisdiction.

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

This appeal arises from an incident on August 27, 1989, when the plaintiff was allegedly hit in the head by a chair thrown by the appellant. The plaintiff obtained the appellant's address through a Department of Motor Vehicles record search. That search revealed that the appellant's address was Fairmont Road, Mahopac, New York. On or about May 28, 1991, the plaintiff instituted an action against the appellant to recover for her personal injuries by serving the summons and complaint upon the appellant's mother at the above address and mailing a copy of the summons and complaint to that address. The appellant answered the complaint and asserted the affirmative defense of lack of personal jurisdiction. The plaintiff moved, *inter alia*, to dismiss the affirmative defense of lack of personal jurisdiction, stating that the affidavit of service clearly shows proper service. The appellant cross-moved to dismiss the complaint, stating that the plaintiff improperly served him at his prior **933 address. He contended that at the time of service, he lived at a different address. The plaintiff responded by submitting an affidavit of the process server, who stated that he searched the records of the Department of Motor Vehicles and found only one address for the appellant--the Fairmont Road address. The Supreme Court granted the plaintiff's motion and denied the appellant's cross motion.

(Cite as: 213 A.D.2d 577, *578, 623 N.Y.S.2d 932, **933)

[1][2] Vehicle and Traffic Law § 505(5) requires that every motor vehicle licensee notify the Commissioner of Motor Vehicles of any change of residence within 10 days of the occurrence of this change. A party who fails to comply with this provision is estopped from challenging the propriety of service which is made to the former address (*see, Sherrill v. Pettiford*, 172 A.D.2d 512, 513, 567 N.Y.S.2d 859; *Lavery v. Lopez*, 131 A.D.2d 820, 517 N.Y.S.2d 182). Here, the record indicates that the appellant failed to change his address as required by the Vehicle and Traffic Law and he is, therefore,

estopped from contesting the validity of service to *579 his former address (*see, Melton v. Brotman Foot Care Group*, 198 A.D.2d 481, 604 N.Y.S.2d 203). By failing to properly change his address, the appellant affirmatively misrepresented his address and the plaintiff had every right to rely upon that misrepresentation in effecting service of process pursuant to CPLR 308(2).

623 N.Y.S.2d 932, 213 A.D.2d 577

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Supreme Court, Appellate Division, Second
Department, New York.

Craig McCLEAVER, Appellant,
v.
Mickey VanFOSSSEN, et al., Respondents.

Oct. 16, 2000.

In an action to recover damages for personal injuries sustained in automobile collision, the Supreme Court, Rockland County, Sherwood, J., defendants' motion to vacate default judgment. Plaintiff appealed. The Supreme Court, Appellate Division, held that defendants, who failed to give notice of their change of address as required by the Vehicle and Traffic Law, were estopped from asserting invalidity of service to their former address as grounds for vacating default judgment.

Reversed.

West Headnotes

[1] Judgment ⇨ 143(2)
228k143(2)

Defendant moving to vacate a judgment entered upon its default must demonstrate a reasonable excuse for the default and a meritorious defense to the action. McKinney's CPLR 5015(a), par. 1.

[2] Process ⇨ 166
313k166

Motorists, who moved from New York to the State of Washington, without giving notice of their change of address as required by the Vehicle and Traffic Law, were estopped from asserting invalidity of service to their former address as grounds for vacating default judgment entered against them in action arising out of motor vehicle accident. McKinney's CPLR 5015(a), par. 1; McKinney's Vehicle and Traffic Law § 505, subd. 5.

[3] Process ⇨ 166
313k166

Party who fails to comply with Vehicle and Traffic Law provision requiring that every motor vehicle

licensee notify the Commissioner of Motor Vehicles of any change of residence within 10 days of the occurrence of the change is estopped from challenging the propriety of service made to the former address. McKinney's Vehicle and Traffic Law § 505, subd. 5.

**138 Burke, McGlenn & Miele, Suffern, N.Y. (Patrick T. Burke and Robert M. Miele of counsel), for appellant.

Alan B. Brill, P.C., Suffern, N.Y. (Paul S. Baum of counsel), for respondents.

CORNELIUS J. O'BRIEN, J.P., THOMAS R. SULLIVAN, GABRIEL M. KRAUSMAN, GLORIA GOLDSTEIN and ROBERT W. SCHMIDT, JJ.

MEMORANDUM BY THE COURT.

*603 In an action to recover damages *604 for personal injuries, the plaintiff appeals from an order of the Supreme Court, Rockland County (Sherwood, J.), dated March 10, 2000, which, *inter alia*, granted the defendants' motion to vacate a judgment of the same court, dated March 5, 1999, entered upon their default in answering the complaint.

ORDERED that the order is reversed, on the law, with costs, the motion is denied, and the judgment dated March 5, 1999, in favor of the plaintiff is reinstated.

[1][2] A defendant moving to vacate a judgment entered upon its default must demonstrate a reasonable excuse for the default and a meritorious defense to the **139 action (*see*, CPLR 5015[a][1]; *Eugene Di Lorenzo, Inc. v. Dutton Lbr. Co.*, 67 N.Y.2d 138, 501 N.Y.S.2d 8, 492 N.E.2d 116; *Domenikos v. Miranda*, 255 A.D.2d 481, 680 N.Y.S.2d 643; *Roussodimou v. Zafiriadis*, 238 A.D.2d 568, 657 N.Y.S.2d 66). The defendants failed to demonstrate a reasonable excuse for their default in appearing.

[3] Vehicle and Traffic Law § 505(5) requires that every motor vehicle licensee notify the Commissioner of Motor Vehicles of any change of residence within 10 days of the occurrence of the change. A party who fails to comply with this

(Cite as: 276 A.D.2d 603, *604, 714 N.Y.S.2d 138, **139)

provision is estopped from challenging the propriety of service made to the former address (*see, Pumarejo-Garcia v. McDonough*, 242 A.D.2d 374, 662 N.Y.S.2d 66; *Burke v. Zorba Diner*, 213 A.D.2d 577, 623 N.Y.S.2d 932; *Sherrill v. Pettiford*, 172 A.D.2d 512, 567 N.Y.S.2d 859). After the instant motor vehicle accident took place in Rockland County, but before the commencement of this action, the defendants moved from New York to the State of Washington, without giving notice of

their change of address as required by the Vehicle and Traffic Law. The defendants are therefore estopped from contesting the validity of service to their former address (*see, Sherrill v. Pettiford, supra*; *Anello v. Barry*, 149 A.D.2d 640, 540 N.Y.S.2d 460; *cf., Keane v. Kamin*, 94 N.Y.2d 263, 701 N.Y.S.2d 698, 723 N.E.2d 553).

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