

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARTHUR F. ENGORON
Justice

PART IAS MOTION 37EFM

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NEW RAINBOW HEAVEN LLC, and RONG LIN,
Plaintiffs,

INDEX NO. 655648/2016

MOTION DATE 10/16/18

MOTION SEQ. NO. 004

- v -

WESCO INSURANCE COMPANY,
Defendant.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123

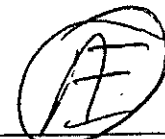
VACATE PLAINTIFFS' DEFAULT; RESTORE
CASE TO ACTIVE STATUS

were read on this motion to/for

Upon the foregoing documents, it is hereby decided that the motion is denied. This Court dismissed this action based on plaintiffs' failure to appear for a conference on 1/23/18. Plaintiffs now move to vacate their default and to restore the case to active status. Hornbook law holds that in order to vacate a default, a plaintiff must demonstrate a reasonable excuse for the default and a meritorious cause of action. Simply put, here, in order to have presented a reasonable excuse, plaintiffs would have to have demonstrated that they were unaware of the conference. However, plaintiffs' moving papers are devoid of any statement that they were not notified of the conference. In their reply papers, there is a "declaration" to that effect, but not a sworn statement. That is insufficient for two reasons: it needed to have been in the moving papers; and the individual plaintiff needed to have sworn to it. Thus, this Court is constrained to deny the instant motion.

Motion denied.

10/16/2018
DATE



ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED
- SETTLE ORDER
- INCLUDES TRANSFER/REASSIGN
- DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT
- OTHER
- REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: