

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

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FERN A. FISHER, DEPUTY CHIEF ADMINISTRATIVE
JUDGE OF THE CITY OF NEW YORK AND
ADMINISTRATIVE AUTHORITY OF THE CIVIL
COURT OF THE CITY OF NEW YORK, by
ERIC T. SCHNEIDERMAN, Attorney General of the State
of New York,

AFFIDAVIT

Petitioner,

Index No. _____

-against-

IAS Part _____

LEUCADIA NATIONAL CORP., L-CREDIT, LLC, LR
CREDIT, LLC, and LR CREDIT 1-23, LLC,
Respondents,

Assigned to Justice _____

and

THE ROLLING JUBILEE FUND,
solely as Assignee.

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Fern A. Fisher, Deputy Chief Administrative Judge of the New York City Courts and
Administrative Authority of the Civil Court of the City of New York, as and for the Verified
Petition, respectfully affirms as follows:

1. I am the Deputy Chief Administrative Judge of the New York City Courts and
Administrative Authority of the Civil Court of the City of New York and the petitioner in this
proceeding.

2. I submit this affidavit in support of the Verified Petition and the relief sought
therein pursuant to CPLR 5015(c).

3. I am familiar with the facts and circumstances of this proceeding. The facts set
forth in this affidavit are based primarily upon information contained in the records of the New
York City Civil Courts, as well as the findings of fact made by courts in decisions in the
litigation captioned *Sykes v. Mel S. Harris and Assoc. LLC*, 09 Civ. 8486 (S.D.N.Y.),

information provided by the defendants in *Sykes*, and the settlement agreement made in connection with that litigation (the “Settlement Agreement”).

INTRODUCTION

4. I bring this special proceeding pursuant to CPLR 5015(c) against Leucadia National Corp., L-Credit, LLC, LR Credit, LLC, and LR Credit 1-23, LLC (the “LR Creditors”), as well as The Rolling Jubilee Fund, to vacate the default judgments obtained by the LR Creditors against tens of thousands of alleged debtors. These default judgments were obtained since approximately 2006 in New York City Civil Court and other New York courts in actions on debt purchased by the LR Creditors.

5. CPLR 5015(c) provides that an administrative judge may bring a proceeding to vacate default judgments when the default judgments “were obtained by fraud, misrepresentation, illegality, unconscionability, lack of due service, violations of law, or other illegalities or where such default judgments were obtained in cases in which those defendants would be uniformly entitled to interpose a defense predicated upon but not limited to the foregoing defenses.” A proceeding pursuant to CPLR 5015(c) may be brought when “such default judgments have been obtained in a number deemed sufficient by [the judge] to justify such action,” upon appropriate notice to the respective parties or their counsel.

FACTS

6. The LR Creditors comprise a group of corporations incorporated either in Delaware or in New York, including Leucadia National Corp., LR Credit, LLC, and the related entities LR Credit 1-23, LLC. Over the last decade, the LR Creditors have bought, and sought to

collect on, the consumer debt of hundreds of thousands of New York consumers. The LR Creditors have obtained approximately two hundred thousand default judgments against those consumers.

7. In 2009, a class action was brought in the Southern District of New York on behalf of the consumers who had been sued by the LR Creditors in New York City Civil Court (the “LR Debtors”). The complaint alleged that, in bringing debt collection actions against the LR Debtors, the LR Creditors often employed improper “sewer service.”

8. The complaint also alleged that when LR Debtors, many of whom were not even aware they had been sued due to improper service, did not appear in court, the LR Creditors fraudulently obtained default judgments through filing false affidavits of merit, and, in some cases, false proofs of service.

9. Affidavits of merit and proof of service are both required under CPLR § 3215(f) for the granting of a default judgment.

10. In the course of certifying the class of LR Debtors, the district court found that records maintained by the process servers for the LR Creditors revealed hundreds of instances of the same process server executing service at two or more locations at the same time. Three process servers alone were responsible for 517 claims that service was performed in two or more places at the same time. *Sykes v. Mel Harris & Assoc. LLC*, 285 F.R.D. 279, 284 (S.D.N.Y. 2012) (“Class Certification Findings of Fact”).

11. Further, the LR Creditors have not objected to the plaintiffs’ contention that the process-service company for most of the default judgments in New York City Civil Court failed to produce in the litigation the logbooks required by statute under certain circumstances to

evidence service on defendants. *Sykes v. Mel S. Harris & Assocs. LLC*, 780 F.3d 70, 77, 86 (2d Cir. 2015).

12. The district court also found that a representative of the LR Creditors filing for default judgment had affirmed in an affidavit of merit in each of thousands of cases that he was “fully and personally familiar with, and [has] personal knowledge of, the facts and proceedings relating to the [debt collection action].” However, the court found, the representative of the LR Creditors did not review the underlying documents pertaining to specific debts. In many cases, the representative did not even have access to key documents, as, for example, the original creditors sometimes failed to provide LR Creditors copies of the actual contracts with debtors, but rather only “sample” contracts. Instead, he used a database concerning alleged facts about the debts received from the original creditors to mass-produce the set of papers filed in connection with each motion for default judgment—for up to fifty cases at a time. He reviewed the papers for one case out of the batch and then signed affidavits of merit for each case in the batch.¹ Class Certification Findings of Fact, 285 F.R.D. at 284-85.

13. The LR Creditors appealed the district court’s decision certifying the class of LR Debtors. That decision was affirmed by the Second Circuit in *Sykes v. Mel S. Harris & Assoc.*, 780 F.3d 70 (2d Cir. 2015).

14. The parties involved in the class litigation have now reached a settlement. As part of the settlement, the LR Creditors have agreed that all alleged debtors whom they sued in New York courts were “‘uniformly entitled’ to interpose a defense [to default judgment]

¹ These findings were made with respect to the class of LR Debtors, which was limited to those debtors whom the LR Creditors had sued in New York City Civil Court. However, the LR Creditors have now stipulated, and the district court found in the course of approving the Settlement Agreement, that the claims of all “similarly situated individuals throughout New York State (and not just individuals in New York City)” arise “from the same operative facts that have been pled by [plaintiffs] in this Action and the findings of fact the Court made...in its March 28, 2013 order” apply to similarly situated individuals throughout New York State, as well. *Sykes v. Mel Harris & Assocs., LLC*, 2016 U.S. Dist. LEXIS 74566, at *12-13 (S.D.N.Y. May 24, 2016) (“Settlement Approval Findings of Fact”).

predicated upon one of the defenses detailed in CPLR Rule 5015(c),” that is, claims of fraud, misrepresentation, illegality, unconscionability, lack of due service, violations of law, or other illegalities. Settlement Approval Findings of Fact at *16-17.

15. The LR Creditors have also agreed “to cooperate in...efforts to vacate the [default judgments at issue]” and that they will “not object to entry of a judgment vacating [the relevant] default judgments and dismissing the consumer debt collection cases.” Settlement Approval Findings of Fact at *16-17.

16. The LR Creditors have transferred all rights they held in all debts of New York debtors and all default judgments obtained by them against alleged debtors in New York courts to The Rolling Jubilee Fund, an unrelated non-profit corporation the mission of which is to provide charitable relief to consumers by lawfully acquiring their unpaid legal obligations and subsequently extinguishing those obligations. The Rolling Jubilee Fund agreed to accept the debts of the LR Creditors in order to facilitate this filing and extinguish the debts. The Rolling Jubilee Fund appears in this action solely as assignee of these assets.


17. The LR Creditors have previously sold the rights to some twenty-five thousand default judgments to other parties. These judgments were not transferred to The Rolling Jubilee Fund.

18. Counsel for the LR Creditors and for The Rolling Jubilee Fund and counsel for the class of LR Debtors have received notice that this petition is being filed.

19. The class-action settlement agreement also provided that all class members would receive notice of the terms of the settlement, including the agreement to seek to vacate all default judgments involved.

20. In support of the Verified Petition, I am attaching as Exhibit A a true and correct copy of a list prepared by counsel to the LR Debtors of all cases in New York state court in which default judgment against an alleged debtor was granted to the LR Creditors.

Dated: New York, New York
November 16, 2016



FERN A. FISHER
Deputy Chief Administrative Judge
New York City Civil Courts
Administrative Authority of the Civil
Court of the City of New York