

Ibrahim v Nablus Sweets Corp.
2016 NY Slip Op 31975(U)
October 6, 2016
Supreme Court, Kings County
Docket Number: 506887/2014
Judge: Bernadette Bayne
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DJMP1

At an IAS Term, Part 18 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, Brooklyn, New York, on the 6th day of October 2016.

P R E S E N T:

HON. BERNADETTE BAYNE

Justice.

ABEER IBRAHIM,

Plaintiff,

- against -

NABLUS SWEETS CORP., NABLUS SWEETS, LLC and
TAISEER HAMOUD,

Defendants.

DECISION and ORDER

Index No.: 506887/2014

The following papers numbered 1 read on this motion: Papers Numbered

Notice of Motion/
Affidavits (Affirmations) Annexed _____ 1

Upon the foregoing papers, ABEER IBRAHIM (Plaintiff), moves for an Order pursuant to CPLR 2004, extending Plaintiff's time to file a motion for default judgment; and an Order pursuant to CPLR 3215 granting Plaintiff a Default Judgment against Defendants NABLUS SWEETS CORP. and TAISEER HAMOUD (collectively defendants), based upon their failure to answer or otherwise defend this action.

Procedural History and Background

Plaintiff was employed at defendant NABLUS SWEETS CORP. and TAISEER HAMOUD's pastry shop located at 6812 5th Avenue, Brooklyn, New York from approximately August 3, 2008 until approximately May 26, 2009. Plaintiff complains, pursuant to New York Labor Law, that during her

employment she was not paid overtime compensation, minimum wages or spread-of-hours-compensation.

On or about July 28, 2014, Plaintiff commenced an action against defendants NABLUS SWEETS CORP., Nablus Sweets, LLC and TAISEER HAMOUD by E-filing a Summons and Verified Complaint.

On or about August 6, 2014, a copy of the E-filed Summons and Verified Complaint was served on defendant TAISEER HAMOUD by personal service.

On or about August 6, 2014, a copy of the E-filed Summons and Verified Complaint was served on defendant NABLUS SWEETS CORP. by delivering a copy of the aforementioned Summons and Verified Complaint to defendant TAISEER HAMOUD pursuant to CPLR 311(a)(1) and CPLR 308.

On or about August 7, 2014, a copy of the E-filed Summons and Verified Complaint was served on defendant Nablus Sweets, Llc. by delivering a copy of the aforementioned Summons and Verified Complaint to Abdrabbo Sharsan, the purported owner.

On or about December 1, 2014, defendant Nablus Sweets, LLC. appeared in the action by filing its answer.

To date, defendants NABLUS SWEETS CORP. and TAISEER HAMOUD have not answered or otherwise appeared in this action.

Plaintiff filed the instant motion on or about September 9, 2016, approximately one year after defendants' default.

Discussion

Plaintiff argues that her motion seeking to extend the time to file a motion for a default judgment and seeking an Order granting her a Default Judgment against Defendants should be granted despite the more than one year delay in seeking the aforementioned Order. Plaintiff argues that her claims are meritorious and she proffers a "reasonable excuse" for the delay in moving for such judgment.

CPLR 3215 (c) reads:

Default not entered within one year. If the plaintiff fails to take proceedings for the entry of judgment within one year after the default, the court shall not enter judgment but shall dismiss

the complaint as abandoned, without costs, upon its own initiative or on motion, unless sufficient cause is shown why the complaint should not be dismissed.

“The policy underlying the statute is to prevent parties who have asserted claims from unreasonably delaying the termination of actions, and to avoid inquests on stale claims. Upon a showing of the requisite one year delay, dismissal is mandatory in the first instance” (*Aurora Loan Services, LLC v. Hiyo*, 130 AD3d 763 [2d Dept. 2015] quoting *Giglio v. NTIMP, Inc.*, 86 AD3d 301, 307 [2d Dept. 2011]). “The one exception to the mandatory language of CPLR 3215 (b) is that the failure to timely seek a default on an unanswered complaint or counterclaim may be excused if “sufficient cause is shown why the complaint should not be dismissed” (*Giglio* at 308). “To establish ‘sufficient cause,’ the plaintiff must demonstrate that it had a reasonable excuse for the delay in taking proceedings for entry of a default judgment and that it has a potentially meritorious action” (*Deutsche Bank Nat. Trust Co. V. Lazinsky*, 36 N.Y.S.3d 407 [2d Dept. 2016]).

Here, Plaintiff attributes the cause of the delay to law office failure. “Although the court has discretion to accept law office failure as a reasonable excuse, a claim of law office failure should be supported by a ‘detailed and credible’ explanation of the default at issue” (*Lugauer v. Forest City Ratner Co.*, 44 AD3d 829 [2d Dept. 2007]). Plaintiff asserts that the attorney who initiated the action on Plaintiff’s behalf “ceased his employment with [the firm] shortly thereafter” (Reilly Affirmation, p. 5, ¶ 21). “At the time of his departure, the attorney did not notify anyone of the file’s location or of the case’s status” (Reilly Affirmation, p. 5, ¶ 21). The affirmation states that after the firm relocated to a new building, on or about May 2016, the firm discovered the file in the former attorney’s desk (Reilly Affirmation, p. 5, ¶ 21). However, Plaintiff’s proffered claim of law office failure is insufficient. The court finds that the ambiguous and vague explanation provided in the affirmation “does not amount to a reasonable excuse” (*Lugauer* at 830). Therefore, Plaintiff’s motion to extend the time to file a motion for a default judgment and for an Order granting her a Default Judgment against Defendants NABLUS SWEETS CORP. and TAISEER HAMOUD is denied. Based upon

the foregoing, the court need not address whether Plaintiff provided sufficient evidence establishing the existence of a meritorious cause of action.

Conclusion

Accordingly, it is

ORDERED, that the Plaintiff's motion to extend time to file a motion for default judgment against NABLUS SWEETS CORP. and TAISEER HAMOUD is denied.

IT IS FURTHER ORDERED, that Plaintiff's motion for an Order pursuant to CPLR 3215 granting Plaintiff a Default Judgment against Defendants NABLUS SWEETS CORP. and TAISEER HAMOUD is denied.

This constitutes the Decision, Order and Judgment of the Court.

E N T E R

MG/MD/MS#
✓

Bernadette Bayne
HON. BERNADETTE BAYNE
J.S.C.
BERNADETTE BAYNE
Supreme Court Justice