

**Manhattan Right to Life Comm., Inc. v Empire
State Bldg. Co., LLC**

2007 NY Slip Op 31255(U)

May 11, 2007

Supreme Court, New York County

Docket Number: 0102830/2007

Judge: Judith J. Gische

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

PRESENT: GISCHE
Justice

PART 10

MANHATTAN RIGHT TO LIFE COMMITTEE
- v - SWC

EMPIRE STATE BUILDING CO.

INDEX NO. 102830/07
MOTION DATE _____
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits _____
Answering Affidavits — Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED

FILED
MAY 22 2007
NEW YORK
COUNTY CLERK'S OFFICE

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

motion decided in accordance
with the accompanying memorandum
decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 5/11/07

JUDITH J. GISCHE, J.S.C. J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Supreme Court of the State of New York
County of New York: Part 10

MANHATTAN RIGHT TO LIFE
COMMITTEE, INC.,
Plaintiff,

Decision/Order
Index No. 102839/07
Mot. Seq. 001

-against-

EMPIRE STATE BUILDING COMPANY, LLC,
Defendant.

Pursuant to CPLR 2219(a) the court considered the following numbered papers on this motion:

PAPERS

NUMBERED

OSC, FN affd., exhibits.....	1
RH affd.....	2
SH affd., exhibits.....	3
MM affd., exhibits.....	4
Notice of cross-motion, KMO affirm., JEH affd., RL affirm.....	5
Reply FN affd., exhibit.....	6
KMO reply affirm. On cross-motion, exhibits.....	7

FILED
MAY 22 2007
NEW YORK
COUNTY CLERK'S OFFICE

Gische, J.:

Upon the foregoing papers the decision and order of the court is as follows:

Defendant, Empire State Building Company LLC ("ESBC"), moves to extend its time to answer the complaint *nunc pro tunc* to April 24, 2007 and to compel plaintiff to accept service of the answer. Plaintiff, Manhattan Right to Life Committee, Inc. ("MRTL"), cross-moves for a default judgment. For the reasons set forth below the motion is granted and the cross-motion is denied.

MRTL and ESBC are respectively tenant and landlord of commercial office space in the Empire State Building ("building"). In or about March 1, 2007, MRTL served a

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summons and complaint upon ESBC's registered agent. The complaint asserts four causes of action for breach of lease based upon the following claims: [1] ESBC improperly designated three different relocation offices at the building for MRTL to move into; [2] ESBC entered into a lease with another tenant for the same space to begin before the parties' existing lease expires; [3] ESBC failed to credit all payments made and [4] breach of covenant of quiet enjoyment by "harassing" MRTL and causing its sole employee to spend time dealing with the parties' disputes. It seeks both monetary and permanent injunctive relief.

ESBC claims that through glitches in its regular office procedure, the complaint was not answered within the time provided by the CPLR. On April 18, 2007, ESBC discovered that the action was pending and investigated its status. By April 24, 2007 it had prepared an answer, in which it did not object to the jurisdiction of the court, denied the material allegations of the complaint and asserted six affirmative defenses. ESBC asked MRTL's counsel if she would accept the answer, which admittedly was at most 24 days late. (The parties concede that an answer was due on March 31, 2007). MRTL's Counsel refused and this motion and cross motion ensued.

CPLR §2004 permits the court, upon a showing of good cause, to extend a parties time to interpose an answer, even after the time to answer has expired. Concomitant with that, CPLR § 3012(d) permits the court to compel the acceptance of a late pleading upon a showing of a reasonable excuse for the delay.

Here the delay was due to an office glitch. Although MRTL is greatly suspicious of the excuse offered, it really offers no basis for the court to reject the excuse as offered. The de minimus nature of the delay (less than a month) and the fact that ESBC concedes

[* 4]
it was properly served, compel a conclusion that the excuse was reasonable.

MRTL argues that the motion should be denied because ESBC has no defenses. As set forth in its moving papers, it is clear that ESBC has defenses to the action. There is a question about the parties' rights under the lease, including the rights of designation and what relief, if any, is appropriate. There are disputes whether the accounts and rent payments made were properly credited and even if MRTL turns out to be correct, whether the conduct of ESBC, as it is found to be, constitutes "harassment" and/or whether such conduct gives rise for any claim for breach of quiet enjoyment under the lease.

MRTL is not prejudiced by having to prosecute, on the merits, a complaint in court that it chose to bring.

Given the strong public policy in favor of resolution on the merits, the motion to compel acceptance of a late answer is granted. The cross-motion for a default judgment is denied.

Conclusion

In accordance herewith, it is hereby:

ORDERED that the motion to extend defendants time to answer *nunc pro tunc* to April 24, 2007 and to compel plaintiff to accept such answer is granted in its entirety; and it is further

ORDERED that plaintiff is deemed to have been served with the answer set forth in the moving papers as of April 24, 2007; and it is further

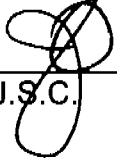
ORDERED that the motion for a default judgment is denied in its entirety; and it is further

ORDERED that the matter is set down before this court for a preliminary conference on June 14, 2007 at 9:30am; and it is further

ORDERED that any requested relief not expressly granted herein is denied and that this shall constitute the decision and order of the court.

Dated: New York, New York
May 11, 2007

SO ORDERED:



J.G. J.S.C.

FILED
MAY 22 2007
NEW YORK
COUNTY CLERK'S OFFICE