

Jones v City of New York
2015 NY Slip Op 30927(U)
June 2, 2015
Supreme Court, New York County
Docket Number: 157358/2014
Judge: Michael D. Stallman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 21

-----X
NAOMI JONES,

Plaintiff,

- against -

Index No.
157358/2014

THE CITY OF NEW YORK, MANHATTAN AND
BRONX SURFACE TRANSPORTATION
OPERATING AUTHORITY, NYSARC, INC.,
ASSOCIATION FOR THE HELP OF RETARDED
CHILDREN, INC. a/k/a AHRC a/k/a AHRC NEW
YORK CITY and EXECUTIVE CLEANING
CONTRACTORS, INC. d/b/a EXECUTIVE SNOW
CONTROL,

Decision and Order

Defendants.

-----X

HON. MICHAEL D. STALLMAN, J.:

Plaintiff moves for a default judgment against defendant Manhattan and Bronx Surface Transportation Operating Authority (Motion Seq. No. 001). The Manhattan and Bronx Surface Transit Operating Authority moves to compel plaintiff to accept its late answer (Motion Seq. No. 002). This decision addresses both motions.

BACKGROUND

On July 28, 2014, plaintiff commenced this action by electronic filing against, among others, defendant Manhattan and Bronx Surface Transportation Operating Authority. (Hecht Affirm., Ex C [Complaint].) The complaint alleges that, on January 29, 2014, plaintiff slipped and fell in a parking lot immediately next to the New York City Transit Authority Rail Control Center, located at 806 Ninth Avenue and 354 West 54th Street in Manhattan. (Complaint ¶¶ 13, 47.) The complaint appears to allege that defendants failed to remove accumulated snow and ice from the parking lot, which became "an extremely hazardous and trap like conditions to pedestrians such as plaintiff herein." (*Id.* ¶ 52.) According to an affidavit of service, the pleadings were served upon the Manhattan and Bronx Surface Transportation Operating Authority by personal delivery on August 21, 2014 at 130 Livingston Street in Brooklyn. (Hecht Affirm., Ex E.)

Manhattan and Bronx Surface Transit Operating Authority claims that it served its answer on November 20, 2014; plaintiff's attorney rejected the answer as untimely.

DISCUSSION

Plaintiff now moves for a default judgment against the Manhattan and Bronx Surface Transportation Operating Authority. Plaintiff's attorney states

that his office did not receive MABSTOA's answer. (Hecht Affirm. ¶ 9.) Plaintiff submits a copy of an Agreement dated June 24, 1994, which plaintiff maintains indicates that the Manhattan and Bronx Surface Transportation Operating Authority is a lessee of the parking lot, and therefore manages and operates the parking lot.

The Manhattan and Bronx Surface Transit Operating Authority (MABSTOA) opposes the motion. MABSTOA states that its answer was served on November 20, 2014. (Shufer Opp. Affirm. ¶ 5.) Pursuant to CPLR 3012 (d), MABSTOA separately moves to compel plaintiff to accept its late answer.

“In order to successfully oppose a motion for a default judgment, a defendant must demonstrate a justifiable excuse for his default and a meritorious defense. Whether there is a reasonable excuse for a default is a discretionary, sui generis determination to be made by the court based on all relevant factors, including the extent of the delay, whether there has been prejudice to the opposing party, whether there has been willfulness, and the strong public policy in favor of resolving cases on the merits. Moreover, courts have the inherent power to forgive even an unexplained default in the interest of justice.”

(New Media Holding Co. LLC v Kagalovsky, 97 AD3d 463, 465 [1st Dept 2012] [internal citations, quotation marks and emendation omitted].)

Here, MABSOTA claims that it did not timely answer the complaint in September due to law office failure. MABSTOA's attorney states that she was assigned to answer the complaint, but “was unexpectedly out of the

office during the first two weeks in September and the work was not transferred.” (Shufer Opp. Affirm. ¶ 6.) MABSTOA maintains that it has a meritorious defense to the action, in that it claims that the parking lot has not been leased to MABSTOA for 20 years. MABSTOA maintains that, under the agreement that plaintiff submitted, it surrendered its leasehold interest to the City so that the City could lease the premises to the New York City Transit Authority (NYCTA) to create a Rail Control Center. MABSTOA contends that NYCTA is now the lessee, and asserts that plaintiff is a NYCTA employee who is barred under Workers Compensation Law from suing her employer.

Plaintiff’s motion for a default judgment against the Manhattan and Bronx Surface Transportation Operating Authority is denied. Contrary to the argument of plaintiff’s attorney, the excuse of law office failure was neither conclusory, perfunctory, nor unsubstantiated. Although plaintiff and MABSTOA disagree as to whether MABSTOA retained any interest in the parking lot, MABSTOA has shown a potentially meritorious defense to the action. (*M&E 73-75 LLC v 57 Fusion LLC*, 121 AD3d 528 [1st Dept 2014].)

As to MABSTOA’s motion to compel acceptance of its answer, the Court rejects plaintiff’s argument that MABSTOA’s motion was not properly served. The motion was electronically filed. Under the rules governing actions where e-filing is mandatory, the e-filing of an interlocutory document

with the NYSCEF system automatically results in a notification to parties, which constitutes service of the interlocutory document to the email addresses of the other parties to the e-filed action. (See 22 NYCRR 202.5-bb [a] [incorporating provisions of section 202.5-b]; 22 NYCRR 202.5-b [f] [2] [ii].)

As plaintiff points out, the affirmation of service of MABSTOA's answer indicates that the answer was purportedly served by mail to "222 Broadway Suite 2912" (Shufer Affirm., Ex B.), whereas the address of plaintiff's counsel is 225 Broadway, Suite 2912. However, the answer is an interlocutory document, and thus it may also be served by electronic filing. The verified answer was efiled on November 26, 2014 as NYSCEF Doc No. 28, as Exhibit B to the MABSTOA's opposition to plaintiff's motion. In light of the reasonable excuse proffered by MABSTOA for its delay in answering the complaint, the Court exercises its discretion to grant MABSTOA's motion. (*Misciagnu v Ocean Ave. Rest., Inc.*, 33 AD3d 566 [1st Dept 2006].) Accordingly, MABSTOA's verified answer is deemed timely served nunc pro tunc. (*Pena-Vazquez v Beharry*, 82 AD3d 649 [1st Dept 2011].)

CONCLUSION

Accordingly, it is hereby

ORDERED that plaintiff's motion for default judgment (Motion Seq. No. 001) against the Manhattan and Bronx Surface Transit Operating Authority, sued herein as defendant Manhattan and Bronx Surface Transportation Operating Authority is denied; and it is further


ORDERED that the motion by Manhattan and Bronx Surface Transit Operating Authority to compel the acceptance of its answer (Motion Seq. No. 002) is granted, and the answer of the Manhattan and Bronx Surface Transit Operating Authority, annexed as Exhibit B to the opposition papers (NYSCEF Doc No. 28), is deemed timely served nunc pro tunc; and it is further

ORDERED that the parties are directed to appear for a preliminary conference on July 9, 2015 at 11 AM in IAS Part 21, 80 Centre St Room 278.

HON. MICHAEL D. STALLMAN

Dated: June 2, 2015
New York, New York

ENTER:



J.S.C.