Castlepoint Ins. Co. v Bibi
2018 NY Slip Op 31711(U)
March 22, 2018
Supreme Court, New York County
Docket Number: 157269/2016
Judge: Gerald Lebovits
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NEW YORK STATE SUPREME COURT
NEW YORK COUNTY: PART 7

CASTLEPOINT INSURANCE COMPANY,

Plaintiff,

-against-

PARVEEN BIBI, MOON SHINE CONSTRUCTION CO., KHURSHID ANWAR, and FRANCES LIGOURI,

Defendants.

Index No.: 157269/2016
DECISION/ORDER
Motion Sequence No. 001

Recitation, as required by CPLR 2219 (a), of the papers considered in reviewing (1) plaintiff's motion for default judgment against Parveen Bibi, Moon Shine Construction Co., and Khurshid Anwar and for summary judgment against defendant Frances Ligouri, and (2) defendants Bibi, Moon Shine Construction Co., Anwar's (the moving defendants), and Frances Ligouri's cross-motions for leave to interpose an answer and opposition to this motion.

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Drabkin & Margulies, New York City (Fabiana Marisa Furgal of counsel), for defendant Frances Ligouri.

Gerald Lebovits, J.

BACKGROUND

Plaintiff, Castlepoint Insurance Company, is a corporation organized under New York State law. On October 2014, plaintiff issued insurance policy No. HOP1158716 (the Policy) to defendant Parveen Bibi for the residence located at 408 Lake St., Brooklyn, NY 11223 (the Premises). Plaintiff issued the Policy for one year, starting on October 19, 2014, and ending on October 19, 2015. On June 25, 2015, while the Policy was still in effect, defendant Frances Ligouri slipped and fell at or around the Premises. On June 8, 2016, Ligouri filed a personal-injury action, Index No. 509653/2016 (the Underlying Action), against Bibi, Moon Shine Construction Co., and Khurshid Anwar (the Moving Defendants).

Bibi notified plaintiff of Ligouri's claims on May 18, 2016, and plaintiff investigated the Premises on May 28, 2016. About two months later, based on the investigative report of the investigator who examined the Premises, plaintiff denied coverage for Ligouri's claims. On August 30, 2016, plaintiff filed this action seeking a judgment declaring that it has no duty to defend or indemnify the defendants in the Underlying Action. Almost eight months later, and after none of the defendants in this action filed an answer, plaintiff moved for a default judgment against all defendants.

Then, Ligouri filed her opposition to the motion for a default judgment and cross-moved for leave to file an answer to the action. In response, plaintiff filed a revised motion on November 14, 2017, seeking a default judgment against the Moving Defendants and summary judgment against Ligouri. The Moving Defendants filed their opposition to the motion and an answer to the action and also filed a cross-motion for leave to file an answer to the action. Plaintiff filed an opposition to both cross-motions on December 27, 2017, and now moves for summary judgment against Ligouri and for a default judgment against the Moving Defendants.

Plaintiff argues that a default judgment against the Moving Defendants is warranted because the Moving Defendants fail to demonstrate any excusable defense for not responding to the action despite proper service. Further, plaintiff argues the Moving Defendants have no meritorious defense to the action, on the ground that the Policy provides no coverage for the incident described in the Underlying Action because the Premises was a three-family dwelling at the time of Ligouri's accident. Plaintiff argues that it is entitled to summary judgment against Ligouri because, similarly to the Moving Defendants, she has no meritorious defense to the action in light of the lack of Policy coverage.

The Moving Defendants argue that plaintiff is not entitled to a default judgment because plaintiff failed to make a prima facie showing of entitlement to judgment as a matter of law. The Moving Defendants argue issues of fact remain in dispute, such as the number of families that resided in the Premises at the time of Ligouri's slip and fall and the identity of the individuals who were served with the action and its accompanying documents. According to the Moving Defendants, their failure timely to file an answer stems from confusion, misunderstanding, and inadvertence. Ligouri's defense is similar to the defense the Moving Defendants present.

Under CPLR 3215, when a defendant has failed to appear, plead, or proceed to trial, the plaintiff may seek a default judgment against that defendant. In addition, "to successfully oppose a [motion for a] default judgment, a defendant must demonstrate a justifiable excuse for his

default and a meritorious defense." (*Johnson v Deas*, 32 AD3d 253, 254 [1st Dept 2006].) But defendants are not required to demonstrate a meritorious defense when no default judgment had been entered. (*Marine v Montefiore Health Sys., Inc.*, 129 AD3d 428, 429 [1st Dept 2015].) Reasons for a default may be as trivial as confusion (*id.*) or mistake, and even "the defalcations of a law firm employee which result in a default may constitute excusable law office failure." (*Goldman v Cotter*, 10 AD3d 289, 291 [1st Dept 2004].) When a plaintiff suffers no prejudice, and there is no evidence of willfulness by defendant, there is a strong public policy in favor of resolving cases on the merits. (*See Chevalier v 368 E. 148th St. Assoc.*, LLC, 80 AD3d 411, 413, 914 [1st Dept 2011]; *Lamar v City of New York*, 68 AD3d 449, 449 [1st Dept 2009].) Courts have generally displayed great leniency in vacating defaults, indicating a strong judicial disposition to see cases determined on the merits. (*Home Ins. Co. v Meyers Parking Sys., Inc.*, 186 AD2d 497, 498 [1st Dept 1992].)

Summary judgment is appropriate where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. One of the recognized purposes of summary judgment is to expedite the disposition of civil cases where no issue of material fact is presented to justify a trial. (*Di Sabato v Soffes*, 9 AD2d 297, 299 [1st Dept 1959].) To succeed in a claim for summary judgment, the movant must present admissible evidence demonstrating that no triable issue of fact exists about whether plaintiff would have been successful in the underlying action. (*Thomas v Holzberg*, 300 AD2d 10, 10 [1st Dept 2002].) Courts are cautioned to exercise the power to summarily direct judgment with full recognition that parties with just claims or valid defenses are entitled to their day in court. (*Di Sabato*, 9 AD2d at 299.)

The Moving Defendants present a reasonable excuse for their delay in answering the complaint. According to the Moving Defendants, their attorney, Amer J. Anwar moved offices around the time the complaint was filed. That caused him to assume that an answer to the action was filed. Such law office failure is excusable. Ligouri alleges confusion as well. According to Ligouri, she was confused between this complaint and the Underlying Action, which she filed against the Moving Defendants and argues this is the reason for her untimely answer. Defendant's excuses may not be compelling, but they are reasonable in the circumstances of this case where a default judgment has yet to be granted. (*Marine*, 129 AD3d at 429).

The Moving Defendants and Ligouri also present substantial defenses on the merits. According to defendants, plaintiff failed to prove the house was a three-family dwelling at the time of Ligouri's accident. Defendants further claim that the investigator came to the Premises only a year after Ligouri's accident, did not enter all the units at the Premises, and did not speak with the other alleged tenants or with the insured (Bibi), and therefore his investigative report has little evidential value. Defendants also claim that one of the three mailboxes at the Premises belongs to MoonShine Construction Co., which is owned by Khurshid Anwar's father and not by a third tenant. There is also no indication that any work to change the number of apartments in the Premises was done. In addition, defendants argue that to disclaim a liability or deny coverage, an insurer must give a written notice as soon as possible or explain its delay in issuing a disclaimer. According to defendants, plaintiff notified defendants of its refusal to provide coverage to the Premises only 59 days after the investigator's visit to the Premises. According to defendants, this alleged delay is unreasonable, unexplained, and thus untimely, and prohibits the declaratory judgment against defendants.

The Moving Defendants provide a reasonable excuse for their delay in filing an answer and a meritorious defense to the action. Ligouri presents issues of fact that are disputed, such as the number of units in the premises, the appropriateness of plaintiff's service, the timeliness of plaintiff's notice of its refusal to provide coverage, and the question of coverage of the policy over the slip and fall incident.

Plaintiff fails to present admissible evidence demonstrating that no triable issue of fact exists as to defendant Ligouri and does not show it will suffer prejudice if defendants' answers are filed at this stage. It would be in the interest of justice to hear defendants' claims and decide this case on its merits. That all defendants eventually filed answers and motions for leave to file an answer shows they did not intend to abandon their claims. Therefore, in consideration of defendants' claims, the lack of prejudice caused to plaintiff, and lack of showing of an intent to abandon the action, plaintiff's motion for default and summary judgments is denied.

Defendants' cross-motions for leave to file an answer and counterclaims is granted. Defendant Parveen Bibi, Moon Shine Construction Co., Khurshid Anwar's answer, NYSCEF document number 88, is deemed served and filed; and defendant Frances Ligouri's answer, NYSCEF document number 49, is deemed served and filed.

Accordingly, it is

ORDERED that plaintiff's motion for default judgment against Parveen Bibi, Moon Shine Construction Co., and Khurshid Anwar is denied; and it is further

ORDERED that plaintiff's motion for summary judgement against Frances Ligouri is denied; and it is further

ORDERED that defendants' cross-motions for leave to file answers to the complaint is granted. Defendant Parveen Bibi, Moon Shine Construction Co., Khurshid Anwar's answer, NYSCEF document number 88, is deemed served and filed; and defendant Frances Ligouri's answer, NYSCEF document number 49, is deemed served and filed; and it is further

ORDERED that defendants serve a copy of this decision and order on the County Clerk's Office and the General Clerk's Office, which are directed to amend their records accordingly.

Dated: March 22, 2018

J.S.C.