

<b>Ripley v Marriott Hotel Servs., Inc.</b>
2019 NY Slip Op 30858(U)
March 29, 2019
Supreme Court, New York County
Docket Number: 158048/2015
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

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INDEX NO. 158048/2015

OLIVER RIPLEY and JEISA RIPLEY,

Plaintiffs,

MOTION SEQ. NO. 003

- v -

MARRIOTT HOTEL SERVICES, INC., IAN SCHRAGER
COMPANY, LLC, IAN SCHRAGER, EDITION MANAGEMENT LLC

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 52, 53, 54, 55, 56,
57, 58, 59, 60, 63, 64, 65, 66, 67, 68, 69, 71

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, it is ordered that the motion is denied.

The history of within matter has been fully set forth in previous motions in this case.
Thus, this Court will only set forth facts involving the instant motion for a default judgment by
the plaintiffs against defendants Ian Schrager Company, LLC and Ian Schrager (the "Schrager
defendants"). This matter was commenced on August 4, 2015. Doc. No. 1. The Schrager
defendants responded with a pre-answer motion to dismiss. Doc. No. 4. That motion was denied
by this Court in its decision and order dated May 22, 2017. Doc. No. 22. Subsequently, the
Schrager defendants moved again for dismissal (Doc. No. 29) and that motion was denied on
April 6, 2018. Doc. No. 49. Notice of Entry was filed by plaintiffs on April 12, 2018. Doc. No.
50.

Therefore, the Schrager defendants had until April 22, 2018 to timely file their answer
pursuant to CPLR 3211(f). The instant motion for a default was filed on June 4, 2018. Plaintiffs

argue that the Schragers defendants were properly served and failed to respond timely and, therefore, this motion should be granted and an inquest should be scheduled to assess damages.

The Schragers defendants filed their answer on June 5, 2018. Doc. No. 61. They filed their opposition to the instant motion of June 11, 2018. Doc. No. 63. In their opposition, they point out that they have been involved in the litigation from the beginning. Additionally, defendants' then-counsel, Diana R. Warshow, an associate of the law firm of Nesenoff & Miltenberg, LLP, represents that she immediately responded to plaintiffs' motion by requesting that they withdraw the same, first by e-mail (Doc. No. 65) and then, by immediately filing an answer. Additionally, counsel for the Schragers defendants appeared for a preliminary conference held on June 5, 2018, at which time counsel again asked the plaintiffs to withdraw their default motion. Doc. No. 66. Additionally, counsel points out that a deposition schedule was set at the conference for all parties, including the Schragers defendants. Counsel for the Schragers defendants argues that plaintiffs will not be prejudiced if their motion is denied, whereas the Schragers defendants would be extremely prejudiced if the motion were granted.

This Court finds, in its discretion, that the motion should be denied. *See Guzzetti v City of New York*, 32 AD3d 234 (1<sup>st</sup> Dept 2006). Initially, plaintiffs were aware, prior to filing the instant motion, that the Schragers defendants had engaged in motion practice in this action. Doc. 29. Further, in response to the instant motion, the Schragers defendants immediately served their answer, containing potentially meritorious defenses, on June 5, 2018, the day after this motion was filed. Docs. 52 and 61. On June 5, 2018, plaintiffs' counsel also entered into a preliminary conference order with the Schragers defendants, at which the depositions of all parties were scheduled. Doc. 62. Given these facts, this Court cannot discern any prejudice which plaintiffs would suffer should this motion be denied, while granting the motion would leave the Schragers

defendants with no defenses despite the fact that they have demonstrated a clear intent to participate in this action.<sup>1</sup> *See Spira v New York City Tr. Auth.*, 49 AD3d 478 (1<sup>st</sup> Dept 2008).

Given the strong public policy favoring the resolution of cases on their merits, this Court deems the answer of the Schragers defendants to be timely filed nunc pro tunc. *See Manne v Berkowitz Sch. of Electrolysis, Inc.*, 165 A.D. 3d 531, 532 (1<sup>st</sup> Dept 2018).<sup>2</sup>

Therefore, in light of the foregoing, it is hereby:

ORDERED that the plaintiffs' motion for a default judgment against defendants Ian Schragers Company, LLC and Ian Schragers is denied; and it is further

ORDERED that the Answer served and filed by defendants, Ian Schragers Company, LLC and Ian Schragers on June 5, 2018, is hereby deemed timely filed, nunc pro tunc; and it is further

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<sup>1</sup> This Court notes that, on January 14, 2019, Nesenoff & Miltenberg, LLP moved to be relieved as counsel for the Schragers defendants, which motion was granted by this Court on January 29, 2019. Doc. No. 80. In granting that motion, this Court ordered a thirty day stay for the Schragers defendants to hire new counsel. Doc. No. 80. Notice of Entry on that order was filed on February 1, 2019. Doc. No. 82. A Notice of Appearance was filed on March 29, 2019 (Doc. No. 83), wherein Wade Clark Mulcahy LLP announced that it now represents the Schragers Defendants.

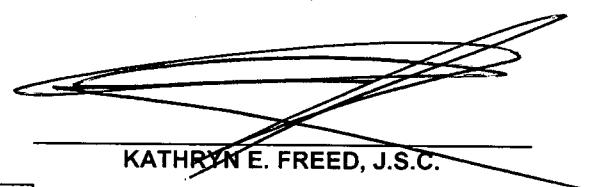
<sup>2</sup> Although the Schragers defendants did not move to compel plaintiffs to accept their answer, this Court determines that the answer should be deemed accepted in the interest of judicial economy, so as to avoid further motion practice on this issue. *See 420 West 206<sup>th</sup> St. Owners Corp. v Lorick*, 2014 NY Slip Op 30348(U) (Sup Ct NY County 2014).

ORDERED that all parties are directed to appear for a compliance conference in Part 2, 80 Centre Street, Room 280, on April 30, 2019 at 2:15 p:m.; and it is further

ORDERED that this constitutes the decision and order of the court.

3/29/2019

DATE

  
KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE