

Hayner Hoyt Corp. v Nayana, Inc.

2019 NY Slip Op 33973(U)

March 15, 2019

Supreme Court, Tompkins County

Docket Number: 2012-0289

Judge: Joseph A. McBride

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At a Motion Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District at the Tompkins County Courthouse, Ithaca, New York, on the 1st day of February 2019.

PRESENT: HON. JOSEPH A. MCBRIDE
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : TOMPKINS COUNTY

THE HAYNER HOYT CORPORATION,

Plaintiff,

-vs-

NAYANA, INC.,

Defendant.

DECISION AND ORDER

Index No. 2012-0289
RJI No. 2017-0305-M

APPEARANCES:

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JOSEPH A. MCBRIDE, J.S.C.

This matter is before the Court to address the motion of Defendant, Nayana, Inc. (“Nayana”) seeking a default judgment on liability against the Plaintiff, The Hayner Hoyt Corporation (“Hayner Hoyt”) on Nayana’s first counterclaim, and an order setting a date certain for an inquest on damages. Further, to address Hayner Hoyt’s cross-motion for an extension of time to file a reply on Nayana’s counterclaim and to compel Nayana to accept the reply. This case originated nearly seven years ago with the original complaint filed March 30, 2012. The first request for judicial intervention was in 2017 and persisted to the present motion. The Court received and reviewed moving papers consisting of Nayana’s motion, Hayner Hoyt’s opposition and cross-motion and Nayana’s reply which and made a determination as discussed below.

BACKGROUND FACTS and PROCEDURAL HISTORY

The background facts of the matter are sufficiently outlined in the Court’s two prior decisions dated December 22, 2017 and August 28, 2018 respectively. The Court will outline a brief procedural history as follows. The original verified summons and complaint was filed on March 30, 2012. The action was inactive for over five years until Hayner Hoyt demanded an answer, which was filed on July 3, 2017 with an accompanying motion for summary judgment filed by Nayana. Since then, the case has undergone a very litigious timeline with two more motions and two appeals. Included in those motions, Nayana sought leave from the Court to amend the answer and counterclaim, which was granted. Now, Nayana wants the Court to hold Hayner Hoyt to a very strict schedule and grant a default motion for failure to answer the counterclaim. Hayner Hoyt filed a cross motion to compel Nayana to accept service of the answer to the counterclaim alleging the time to answer a counterclaim had passed by six days.

ANALYSIS AND DISCUSSION

Default

A default judgment is usually reserved for those that fail to appear in an action at all. The strict reading of CPLR § 3215 provides for a default when the defendant fails to answer a

summons. The statute further states that a default can be entered on behalf of a defendant if the plaintiff fails to appear for a scheduled trial. The crux of the statute seems to revolve around the phrase, "neglect to proceed." The commentary discussing granting a motion for default is fact specific for any given case. McKinney's suggests that default and dismissal of an action shall be reserved for when the defendant's make an omission to proceed.

Further, when deciding whether to vacate a default judgment, the Third Department has continually held that there is a "strong public policy preference for resolving issues on the merits." Lovelace v. RPM Ecosystems Ithaca, LLC, 131 A.D.3d 760, 761 (3rd Dept. 2015); *see* Gurin v. Pogge, 112 A.D.3d 1028, 1030 (3rd Dept. 2013). Moreover, the Third Department suggests that the Supreme Court should consider "Whether there is a reasonable excuse for a default... 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." Puncher v. Nastake, 91 A.D.3d 1261, 1261-62 (3rd Dept. 2012). *citing* Rickert v Chestara, 56 AD3d 941 (3rd Dept. 2008).

In the case at hand, the Court is not persuaded that a default is an appropriate remedy. Looking at the factors set forth above as applied to the current case, the Court finds that the minimal delay, the lack of prejudice to the opposing party, and the lack of willful delay, gives more weight to the need to resolve cases on their merits rather than holding parties to a strict construct of the time limits. The Court finds that Hayner Hoyt did not abandon their case and has not neglected to proceed. Hayner Hoyt, allowed five years for Nayana to respond to the original verified answer and complaint. After a motion for summary judgment, Nayana sought and received an extension of time to file a counter-claim. Nayana filed the amended answer and counter-claim more than one year after the original answer was filed. Now Nayana expects the Court to be strict with the statutory time limits after Hayner Hoyt failed to answer within the statutory time period by six days. Given the history of the case, the Court does not find that six days is a substantial delay. While Hayner Hoyt did not ask for an extension of time to file an answer until after Nayana filed a motion for a default judgment, the Court cannot find that Hayner Hoyt abandoned its defense or neglected to proceed.

Extension for Reply and Compel to Accept

The Court now turns to Hayner Hoyt's cross-motion requesting an Order for an extension of time to serve its reply to Nayana's counterclaim and to compel Nayana to accept such reply. Pursuant CPLR 3012(d), the Court may extend time to plead or compel acceptance, "upon a showing of reasonable excuse for delay or default." *See also Puncher*, 91 A.D.3d at 1262 (Supreme Court has the discretion to permit late service of an answer upon showing of a reasonable excuse for the delay and a meritorious defense to the complaint.)

Further, where the delay is "relatively brief," case law suggests that it is not an abuse of discretion to allow an extension that it did not cause any prejudice to the parties. *see Mills v. Niagara Mohawk Power Corp.*, 216 A.D.2d 828 (3rd Dept. 1995). In *Mills*, the Third Department held that plaintiff was not required to tender an excuse for the delay or provide a meritorious cause of action as the delay was just six days and there was no evidence of prejudice. *Id.* at 828. *see also Lehigh v. R. Co. v. North American Van Lines, Inc.*, 25 A.D.2d 923 (3rd Dept. 1966) (no prejudice as a result of the 12-day delay in the service... nor was the delay "inordinate" or "prolonged" and thus the supreme court could properly deny the motion without the necessity of an affidavit of merits or a cross motion.)

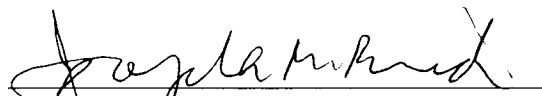
Here, the delay of six days is relatively brief and there is no prejudice to Nayana caused by the delay. The Court entered a decision, dated August 28, 2018, granting Nayana an extension of time to file an amended answer and counterclaim. On September 14, 2018, Nayana served Hayner Hoyt with the amended answer and counterclaim. On September 20, 2018, Hayner Hoyt filed a notice of appeal to the Court's August 2018 decision. While an appeal does not automatically stay the case, it is clear Hayner Hoyt was not abandoning their defense. Further, upon receipt of the motion for default, Hayner Hoyt's attorney did reach out to Nayana's attorney to discuss the possibility of settlement and resolving the matter out of Court. The Court does take notice that both sides have a different interpretation of the exchanged emails and letters about the reality of the case engaging in settlement discussions and this correspondence did occur after the statutory period has passed. Therefore, the Court does not find any prejudice that resulted from a six-day delay in the scheme of a litigious eighteen months.

CONCLUSION

Based upon the foregoing, Nayana's current motion for default is DENIED and Hayner Hoyt's cross-motion for an extension and to compel acceptance of the answer is GRANTED.

This constitutes the **DECISION AND ORDER** of the Court. The transmittal of copies of this Decision and Order by the Court shall not constitute notice of entry (see CPLR 5513).

Dated: March 15, 2019
Ithaca, New York



HON. JOSEPH A. MCBRIDE
Supreme Court Justice