

<b>New York City Tr. Auth. v Bondis</b>
2020 NY Slip Op 31665(U)
May 28, 2020
Supreme Court, New York County
Docket Number: 451142/2018
Judge: Lisa A. Sokoloff
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 19

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NEW YORK CITY TRANSIT AUTHORITY,

PLAINTIFF,

v.

**DECISION & ORDER**

INDEX NO. 451142/2018

ATHENA BONDIS, CITY PRACTICE GROUP USA, LLC  
D/B/A CITYMD, CITY PRACTICE GROUP OF NEW  
YORK, LLC D/B/A CITYMD, NYU LANGONE HEALTH  
SYSTEM, NYU LANGONE HOSPITALS, NYU LANGONE  
HOSPITAL OF BROOKLYN F/K/A NYU LUTHERAN  
MEDICAL CENTER and any and all subsidiaries  
and affiliates,

Mot. Seq. 1

DEFENDANTS.  
-----X

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered	NYSCEF #
Plaintiff's Motion/Affirmations/Memo of Law	<u>1</u>	7-17
Defendant's Affirmation in Opposition	<u>2</u>	28-44
Defendant's Cross-Motion / Affirmation	<u>3</u>	45-66
Plaintiff's Reply Affirmation	<u>4</u>	67-68
Plaintiff's Opposition to Cross-Motion	<u>5</u>	69

**HON. LISA A. SOKOLOFF, J.S.C.**

In motion sequence 001, plaintiff New York City Transit Authority (NYCTA) moves pursuant to CPLR 3125 for a declaratory judgment on default against defendant Athena Bondis (Bondis) on the basis that Bondis failed to answer NYCTA's complaint (the Complaint). Furthermore, Bondis cross-moves for reimbursement of medical expenses and sanctions against the NYCTA (NYSCEF Doc. No. 45).

**BACKGROUND**

Briefly, this action arises out of an alleged injury suffered by Bondis on October 1, 2017, while attempting to board a NYCTA bus. On October 5, 2017, Bondis filed for no-fault benefits

claiming that that she suffered injuries to her back when the doors of the bus slammed on her (Meyer affirmation, exhibit B). On April 25, 2018, NYCTA denied Bondis's claim in its entirety after determining that her "alleged injuries did not arise from the use or operation of a motor vehicle" because "the unequivocal video evidence demonstrates that claimant's arm and hand were entirely clear of the closing doors at all times, and [Bondis's] purported injuries on October 1, 2017 neither arose out of a covered incident nor occurred as alleged" and that Bondis's "continued misrepresentations of material fact constitute further grounds for non-coverage" (*id.*, exhibit F, pp. 1, 3).

On June 18, 2018, NYCTA subsequently commenced this action seeking a declaration pursuant to CPLR 3001 that defendants are not entitled to receive any payments or insurance coverage related to the October 1, 2017 injury. Thereafter, on August 17, 2018 and April 10, 2019, NYCTA discontinued the action against defendants City Practice Group USA, LLC D/B/A CityMD, City Practice Group Of New York, LLLC D/B/A CityMD and defendants NYU Langone Health System, NYU Langone Hospitals, NYU Langone Hospital of Brooklyn F/K/A NYU Lutheran Medical Center and any and all subsidiaries and affiliates, respectively (NYSCEF Doc Nos. 4, 21).

On March 18, 2019, NYCTA moved for a default judgment on the basis that Bondis failed to timely answer the Complaint (NYSCEF Doc No. 17). On July 11, 2019, Bondis filed her opposition to the motion for default judgment and filed a cross-motion seeking sanctions and damages (NYSCEF Doc No. 45).

### DISCUSSION

As a threshold matter, in light of the fact that Bondis is unrepresented and in the interest of reaching a determination on the merits, the court will accept her late opposition to the motion for default judgment and cross-motion. Furthermore, NYCTA represented at oral argument that

it prefers a determination on the merits and did not otherwise raise any prejudice that would result in permitting this court to accept Bondis's late opposition to the motion for default judgment and cross-motion (tr July 25, 2019, 5:24-6:2). Furthermore, despite the untimeliness of Bondis's papers, NYCTA did file a reply to its motion for default judgment and an opposition to the cross-motion.

To successfully oppose NYCTA's motion for default judgment, Bondis must establish a justifiable excuse for her default and a meritorious defense (*Johnson v Deas*, 32 AD3d 253, 254 [1st Dept 2006][internal quotation marks and citations omitted]). "The determination of what constitutes a reasonable excuse lies within the sound discretion of the Supreme Court" (*Deutsche Bank Natl. Trust Co. v Saketos*, 158 AD3d 610, 612 [2d Dept 2018][internal quotation marks and citations omitted]). "Whether a proffered excuse for delay is reasonable, as required to avoid entry of a default judgment, is a 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" (*Fried v Jacob Holding, Inc.*, 110 AD3d 56, 60 [2d Dept 2013][internal quotation marks and citations omitted]).

Bondis, who is self-represented, contends that she failed to answer the Complaint because she was transitioning between attorneys and did not originally intend to represent herself (tr, July 25, 2019, 4:11-14). NYCTA does not identify any prejudice as a result of Bondis's failure to timely answer the Complaint.

Bondis further argues that the determination reached by the NYCTA in denying her claim because the video evidence when viewed at the proper speed clearly shows that the bus door physically made contact with her arm and that she was not "entirely clear of the closing doors at

all times” as concluded by NYCTA (Meyer affirmation, exhibit F, p. 3). Bondis submits photographic stills of the video in support of her motion (Bondis aff, exhibits A & B).

This court in its discretion finds that Bondis has established an excusable default with respect to her failure to timely answer the Complaint when considering her self-represented status, the extent of the delay, the lack of prejudice to NYCTA, and that the default was not willful as demonstrated by Bondis’s continued participation in the action (*Gecaj v Gjonaj Realty & Mgt. Corp.*, 149 AD3d 600, 602 [1st Dept 2017])[“[w]hat constitutes a reasonable excuse for a default generally lies within the sound discretion of the motion court”][internal quotation marks and citations omitted]).

In addition, this court finds that Bondis’s opposition to the motion for default comprised of her affidavit and photographic evidence sufficiently establish a potentially meritorious defense to the action based on NYCTA’s defective analysis of the video evidence (*Peacock v Kalikow*, 239 AD2d 188, 190 [1st Dept 1997]).

However, Bondis’s cross-motion is denied as the substance of the cross-motion relates to NYCTA’s conduct during its investigation process and is more appropriately presented in the form of an answer to the Complaint. Thus, this court will grant Bondis an opportunity to file her answer as a condition to denying the motion for default judgment.

Lastly, New York courts rarely grant declaratory judgments on default “with no inquiry by the courts as to the merits” (*Tanenbaum v Allstate Ins. Co.*, 66 AD2d 683, 684 [1st Dept 1978]). Declaratory judgments require that a “plaintiff establish a right to a declaration against a defendant” and will not be granted on the default and pleadings alone (*Levy v Blue Cross & Blue Shield of Greater N.Y.*, 124 AD2d 900, 902 [3d Dept 1986]).

Consequently, a hearing is required before this court can grant the relief requested by NYCTA.

Accordingly, it is

ORDERED that the NYCTA's motion for default judgment is held in abeyance and shall be denied in its entirety on the condition that Bondis files an answer to the complaint within forty-five [45] of service upon her of this order with notice of entry; and it is further

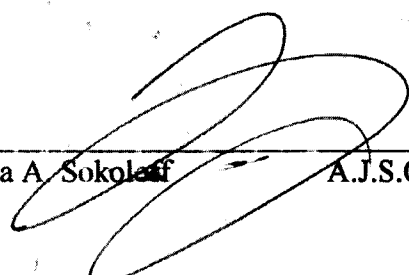
ORDERED that Bondis's cross-motion is denied in its entirety; and it is further

ORDERED that Bondis is directed to present this order along with NYCTA's complaint to the Help Center<sup>1</sup>, located at 60 Centre Street, Room 116, New York, NY for assistance in preparing her answer to the complaint, unless counsel is retained to represent her in this matter; and it is further

ORDERED that NYCTA may contact the Clerk of Part 19 to restore this motion if Bondis fails to interpose an answer as directed in this decision and order.

Dated: May 28, 2020

ENTER:

  
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Lisa A. Sokoloff A.J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input checked="" type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	
			<input type="checkbox"/>			
			DENIED			

<sup>1</sup> It is suggested that Bondis contact the Help Center by telephone at 646-336-3025 to determine their hours and whether they can attempt to assist her first remotely.