

Han v New York City Tr. Auth.
2020 NY Slip Op 32558(U)
August 5, 2020
Supreme Court, New York County
Docket Number: 152872/2013
Judge: Suzanne J. Adams
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SUZANNE J. ADAMS
Justice

PART IAS MOTION 21

ASHLEY HAN, ESTATE OF KI SUCK HAN, SE RIM HAN,
Plaintiff,

INDEX NO. 152872/2013
MOTION DATE N/A
MOTION SEQ. NO. 008

- v -

NEW YORK CITY TRANSIT AUTHORITY,
Defendant.

DECISION + ORDER ON MOTION

NEW YORK CITY TRANSIT AUTHORITY
Plaintiff,

Third-Party
Index No. 595681/2016

-against-

NAEEM DAVIS
Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

This wrongful death matter arises out of the December 3, 2012, incident in which plaintiff's decedent became involved in an altercation with third-party defendant Naeem Davis ("Davis") on the platform of the southbound Q train at the 49th Street station in Manhattan. During the altercation, Davis pushed the decedent, who fell onto the subway tracks and was killed by an oncoming train. Davis was arrested and charged in the decedent's death in December 2012, and remained incarcerated until his trial in June 2017. On July 17, 2017, Davis was acquitted of all charges and released from jail. Meanwhile, plaintiff brought this action against defendant New York City Transit Authority ("NYCTA") in March 2013. NYCTA answered in April 2013, and

thereafter commenced the third-party action against Davis in September 2016. Davis did not serve an answer or otherwise contact NYCTA. In October 2017, NYCTA timely moved for a default judgment against Davis, which motion was granted by order of this court dated April 12, 2018.

Davis now moves to vacate the default pursuant to CPLR 5015(a)(1) and to extend his time to answer or respond pursuant to CPLR 3012(d). Plaintiff and NYCTA oppose the motion, and NYCTA also cross-moves to vacate the note of issue in this matter, compel discovery and enlarge its time to move for summary judgment of any counterclaims by Davis, or alternatively to stay trial pending completion of discovery and any motion practice, in the event Davis' motion is granted. Davis does not oppose the cross-motion to the extent it seeks additional time and expedited discovery.

For the reasons set forth below, Davis' motion is granted and the default judgment against him is vacated. NYCTA's cross-motion is granted to the extent that there shall be expedited discovery in the third-party action and an extension of time for NYCTA to move to dismiss counterclaims, if any; the remainder of the cross-motion is denied.

Motion to Vacate Default Judgment

CPLR 5015(a)(1) allows a court to vacate a judgment or order against a party on the grounds of an excusable default. "In addition to the grounds set forth in section 5015(a), a court may vacate its own judgment for sufficient reason and in the interests of substantial justice [cites omitted]," *Woodson v. Mendon Leasing Corp.*, 100 N.Y.2d 62, 68 (2003). Furthermore, an application for relief from a default judgment is to be liberally construed, and courts prefer to determine a case on the merits rather than on default. *46 Downing Street LLC v. Thompson*, 41 Misc. 3d 1018, 1026 (citing *Myzal v. Mecca*, 28 A.D.2d 1022, 1023 (3d Dep't 1967) and *DFI Communications, Inc., v. Golden Penn Theatre Ticket Service*, 87 A.D.2d 778 (1st Dep't 1982)).

In this action, the fact of Davis' lengthy pre-trial incarceration and post-release circumstances justify a vacatur of the default judgment entered against him. His situation is similar to the facts in *46 Downing Street*, where the defendant's incarceration was held to constitute a reasonable excuse to vacate his default. 41 Misc. 3d at 1026-28. This court also notes that the court file does not reflect the filing and service of a notice of entry of the default judgment, nor does NYCTA dispute Davis' contention that he was never served with the default judgment, but only learned of it through his former criminal defense lawyers. Accordingly, the motion to vacate the default is granted.

Cross-motion to Strike the Note of Issue

Given the age of this matter, and the unlikelihood of an imminent trial date due to the current worldwide COVID-19 pandemic, this matter will remain on the trial calendar. However, discovery in the third-party action will proceed on an expedited basis, and shall conclude on or before December 1, 2020. NYCTA shall have 45 days from the completion of discovery to file a motion for summary judgment with respect to any counterclaims asserted by Davis.

Accordingly, it is hereby

ORDERED that Davis' motion is granted and the order of this court dated April 12, 2018, granting default judgment against Davis is hereby vacated; and it is further

ORDERED that Davis shall serve an answer to the third-party complaint upon all parties within 30 days of entry of the instant order; and it is further

ORDERED that NYCTA's cross-motion is granted to the extent that all discovery in the third-party action shall be completed on or before December 1, 2020, and NYCTA shall have 45 days from the completion of said discovery to move for summary judgment with respect to any

counterclaims asserted in the third-party action, and that the remainder of NYCTA's cross-motion is denied.

This constitutes the decision and order of the court.

8/5/2020

DATE

SUZANNE J. ADAMS, 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