

Lavrentios v True, Inc.
2020 NY Slip Op 32893(U)
September 2, 2020
Supreme Court, New York County
Docket Number: 655699/2019
Judge: Melissa A. Crane
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MELISSA A. CRANE

Justice

PART 15

KATHERINE LAVRENTIOS,

INDEX NO. 655699/2019

- v -

MOTION SEQ. NO. 1

TRUE, INC. d/b/a TRUE MODEL MANAGEMENT,

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/Order to Show Cause — Affidavits — Exhibits ... _____

Answering Affidavits — Exhibits _____

Replying Affidavits _____

CROSS-MOTION: YES X NO

HON. MELISSA CRANE, J.S.C.

In motion sequence 001, plaintiff Katherine Lavrentios (Lavrentios) moves, pursuant to CPLR 3215, for a default judgment against defendant True, Inc. d/b/a True Model Management (True) on the basis that True has failed to timely answer the complaint. True opposes the motion.

This action arises out of dispute relating to the purported termination of a modeling agreement between Lavrentios and True dated July 22, 2016 (Agreement) (NYSCEF Doc. No. [NYSCEF], 10). Under the Agreement, True would manage Lavrentios, a model, for an initial term of three years with an automatic one-year renewal unless Lavrentios notified True of her intention not to renew the Agreement at least 90 days before the expiration of the initial term (NYSCEF 10, ¶ 3). Further, paragraph 20 of the Agreement (Notice Provision) provides that “Notice of contract termination must be sent via certified mail” (*id.* at ¶ 20).

Lavrentios contends that she substantially complied with the Agreement’s Notice Provision on May 16, 2019 by notifying Dale Noelle of True that she did not intend to renew the Agreement and that she was dissatisfied with True’s management of her modeling career (*id.* at ¶ 9). True argues

Lavrentios's failure to comply with the Notice Provision resulted in the renewal of the Agreement on July 22, 2019 (NYSCEF 11, ¶ 66-67). True subsequently attempted to negotiate a release with Lavrentios in good faith, but the parties failed to reach an agreement (NYSCEF 11, ¶ 67-68). On September 26, 2019, Lavrentios commenced this action seeking injunctive relief and declarations that: 1) her substantial compliance with the Notice Provision was sufficient to terminate the Agreement prior to the automatic renewal of the Agreement, and 2) the Agreement is unenforceable as an impermissible restraint of trade (Complaint, ¶¶ 26-30). On November 14, 2019, Lavrentios agreed that she would not move for a default judgment during the pendency of the settlement discussions (NYSCEF 13).

On December 10, 2019, True discovered that a competing modeling agency was representing Lavrentios despite that, under their view, she was still under True's management and subject to the terms of the Agreement (NYSCEF 14). True contends her representation by a competing modeling agency is a breach of the Agreement.

On December 12, 2019, Lavrentios sent True a proposed settlement agreement and release via email (Release) (NYSCEF 15). On December 13, 2019, Lavrentios followed up with a second email stating that if True did not execute the Release, she would proceed on the assumption that True is reneging on its settlement offer (NYSCEF 16). Later that day, True responded that it was still considering the terms of the Release (NYSCEF 18).

On December 23, 2019, Lavrentios moved for a default judgment on her complaint. On January 27, 2020, True filed its verified answer with counterclaims as an exhibit to its opposition to this motion arguing that the settlement discussions concluded on December 13, 2019 (NYSCEF 11). On January 27, 2020, True opposed the motion and interposed its verified answer with counterclaims against Lavrentios for breaching the Agreement.

Based on the record before the court, Lavrentios's motion for default judgment is denied because the ongoing settlement discussions excused True's failure to answer. Settlement discussions generally provide a reasonable excuse for a failure to answer the complaint (*Finkelstein v East 65th St. Laundromat*, 215 AD2d 178, 178 [1st Dept 1995]). The email communications Lavrentios proffered, allegedly informing True that settlement discussions were concluded and thus, the agreement to stay the motion for default judgment was no longer operative could be tactical. Consequently, it falls short of a definitive statement foreclosing the continuation of settlement discussions or seeking the filing of True's answer. Even accepting Lavrentios's contentions that the settlement discussions concluded on December 13, 2019, that True filed its verified answer and counterclaims on January 27, 2019, is not so unreasonable as to support the entry of a default judgment. In addition, True raised its potential counterclaims, based on Lavrentios's purported breach of the Agreement, a few days before the alleged settlement deadline. Moreover, True establishes a meritorious defense, although it is unnecessary to defeat the motion for default judgment, because no default judgment or order of default has been entered in this action (*Verizon N.Y. Inc. v Case Constr. Co.*, 63 AD3d 521, 522 [1st Dept 2009]). Lastly, under the circumstances, and in favor of resolving this dispute on the merits, this court will deem True's verified answer and counterclaims served as of January 27, 2020 (*Gecaj v Gjonaj Realty & Mgt. Corp.*, 149 AD3d 600, 602 [1st Dept 2017]).

Accordingly, it is

ORDERED that plaintiff Katherine Lavrentios's motion for default judgment is denied in its entirety, and it is further

ORDERED that service of the answer and counterclaims shall be deemed served as of January 27, 2020, and it is further

ORDERED that defendant is directed to upload a copy of the answer with counterclaims to e-filing as a separate EDOC within ten days of the efiled date of this decision and order; and it is further

ORDERED that plaintiff shall have 30 days from the efiled date of this decision and order to reply to the counterclaims; and it is further

ORDERED that the parties are directed to attend a preliminary conference on October 14, 2020 at 11:30 am via phone. Plaintiff is directed to circulate a call in number..

DATED: September 2, 2020
New York, New York

ENTER:



MELISSA A. CRANE, J.S.C

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER