

Breland v City of New York
2020 NY Slip Op 33099(U)
September 22, 2020
Supreme Court, New York County
Docket Number: 152046/2020
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.152046/2020

HAJI A. BRELAND,

Plaintiff,

MOTION SEQ. NO.001

- v -

CITY OF NEW YORK, NEW YORK CITY HOUSING
AUTHORITY, ELLIOT MEDINA, and IVONNE
CUNNINGHAM,**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13,
14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27

were read on this motion to/for

EXTEND TIME TO ANSWER.

In this employment discrimination action commenced by plaintiff Haji A. Breland, defendants New York City Housing Authority ("NYCHA"), Elliot Medina ("Medina"), and Ivonne Cunningham ("Cunningham") (collectively "defendants") move to extend their time to answer, move, or otherwise respond to plaintiff's verified complaint. Plaintiff opposes the motion. After consideration of the parties' contentions, as well as a review of the relevant statutes and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND:

On February 25, 2020, plaintiff commenced the instant action alleging that the City of New York, NYCHA, and NYCHA employees Medina and Cunningham discriminated against

him based on his race, religion and disability. Doc. 1.¹ NYCHA, Medina and Cunningham were served with process on March 17, 2020, at the outset of the Covid-19 pandemic. Docs. 3, 4, and 7. Although defendants requested an extension of time to answer or otherwise move, plaintiff refused to grant the same. Doc. 10.

Defendants now move, in effect, pursuant to CPLR 3012(d), to extend their time to answer, move, or otherwise respond to the complaint. Docs. 8-11. In support of the motion, counsel for defendants asserts that an extension of time to answer is necessary to, among other things, investigate the allegations against them; interview Medina and Cunningham; and to gather evidence necessary to file a motion to dismiss pursuant to CPLR 3211.

In opposition, plaintiff argues that defendants are not entitled to an extension of time since he filed a complaint against defendants with the New York City Commission on Human Rights (“NYCCHR”) in 2018, which was proceeding and was administratively closed in November 2019 so that he could pursue the captioned action. Doc. 15 at pars. 3-6.² Plaintiff asserts that, since defendants “have been aware of many of [his] allegations in the [subject action] for well more than two (2) *years*”, (emphasis provided) they do not need any additional time to investigate the claims herein. Doc. 15 at par. 18. Additionally, plaintiff argues that, due to the ban on filing due to the pandemic, which lasted from March 22 until May 25, 2020, defendants had far more time to answer than usually provided by the CPLR. Doc. 15 at par. 19.

¹ Plaintiff discontinued his claims against the City of New York by stipulation of partial discontinuance filed August 4, 2020. Doc. 24.

² Defendants admit that plaintiff filed a prior complaint with the NYCCHR. Doc. 9 at par. 7.

In reply, defendants argue, inter alia, that plaintiff does not assert that he would be prejudiced if the instant motion were granted. Doc. 26 at pars. 6, 25. They further assert that NYCHA was not properly served with process. Doc. 26 at pars. 12-16.

Finally, the parties dispute whether, and to what extent, orders issued by Governor Cuomo and Chief Judge DiFiore as a result of the pandemic affected the deadline for defendants to answer the complaint.

LEGAL CONCLUSIONS:

Pursuant to CPLR 2004, a court may extend the time for doing any act upon good cause shown. Additionally, pursuant to CPLR 3012(d), this Court may, in its discretion, extend a defendant's time to answer a complaint upon a showing of a reasonable excuse for its delay.

NYCHA's investigation into whether it must defend its employees Medina and Cunningham is a reasonable excuse for defendants' delay in answering (*see Harris v City of New York*, 30 AD3d 461 [2d Dept 2006]; *Silverio v City of New York*, 266 A.D.2d 129 [1st Dept 1999]), and defendants are not required to submit an affidavit of merit where, as here, no default order or judgment has been entered. *See Arrington v Bronx Jean Co., Inc.*, 76 AD3d 461 (1st Dept 2010); *Lamar v City of New York*, 68 AD3d 449 (1st Dept 2009).

Even assuming, arguendo, that defendants' excuse for its delay is not reasonable, plaintiff has failed to establish, or even assert, that it would be prejudiced by the service of a late answer; the delay in answering was not lengthy, especially given that service of process was effectuated

just as the pandemic began; and the policy of resolving disputes on their merits militates in favor of granting of the application. *See Cantave v 170 W. 85 St. Hous. Dev. Fund Corp.*, 164 AD3d 1157 (1st Dept 2018) citing *Artcorp Inc. v Citirich Realty Corp.*, 140 AD3d 417 (1st Dept 2016).

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

ORDERED that defendants' motion seeking leave to file a late answer or otherwise move or respond to the complaint is granted; and it is further

ORDERED that defendants are directed to serve their answer, file a motion, or otherwise respond to the complaint within 30 days of the date of entry of this order; and it is further

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

9/22/2020
DATE

CHECK ONE:

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CASE DISPOSED

GRANTED

☐

DENIED

APPLICATION:

☐
☐

SETTLE ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

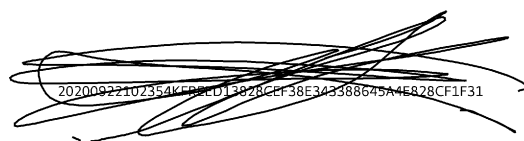
FIDUCIARY APPOINTMENT

☐

OTHER

☐

REFERENCE



KATHRYN E. FREED, J.S.C.