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| MICAA Rest. Corp. v Allyn N.Y. Inc. |
| 2020 NY Slip Op 35208(U) |
| November 12, 2020 |
| Supreme Court, Nassau County |
| Docket Number: Index No. 606210/2019 |
| Judge: Sharon M.J. Gianelli |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU - IAS/TRIAL PART 17
Present: Hon. Sharon M.J. Gianelli

MICAA Restaurant Corp. and ACACM CORP.,

X

Plaintiff,

Index No: 606210/2019

-against -

Motion Seq. No: 001

ALLYN N.Y. INC.,

Decision & Order

Defendant.

X

Papers submitted on this motion:

Defendant's Notice of Motion
and Affirmation in Support _____ X
Plaintiff's Affirmation in Opposition _____ X
Defendant's Reply _____ X

This action was commenced by the filing of a Summons with Notice on May 6, 2019. A Notice of Appearance and Demand for Complaint was filed on July 3, 2019. In this action, Plaintiffs allege that Defendant illegally dumped heating oil into the premises causing extensive property damage.

Defendant now moves for an order pursuant to CPLR § 3012(b), dismissing Plaintiffs' Summons with Notice in its entirety. Defendant claims it is entitled to dismissal because Plaintiffs failed to serve a Complaint, despite Defendant's timely demand for one pursuant to CPLR § 3012(b).

Plaintiffs served its Complaint simultaneously with its Opposition to Defendants' motion to dismiss, and argues that dismissal is not warranted in this matter. Plaintiffs

state that the reason for the delay in the service of Complaint was the Plaintiffs' continual and ongoing efforts to document the oil impact, the parties involved, obtain the DEC reports, the engineering and remediation records, and business loss records. Plaintiffs state same will be provided to Defendant in the course of discovery.

Though not brought by Cross-Motion, Plaintiffs request an extension of time to file the Complaint.

Plaintiffs argue that there is no prejudice to Defendant and that this Court must make determinations of matters based on the substance of the underlying allegation, and not on procedural delays or extensions.

Defendant argues that Plaintiffs have failed to establish a sufficient excuse for the delay.

Analysis

The courts of this state generally follow the strong public policy of preferring to decide cases on their merits. (*Thompson v. Steuben Realty Corp.*, 18 A.D.3d 864 [2d Dept. 2005]; *Chowdhury v. Phillips*, 306 A.D.2d 51 [1st Dept. 2003]). Herein, while the Complaint was filed late, it was still filed within the statute of limitations, the delay was not willful, and Defendant has cited no prejudice to him should the late complaint be allowed.

Accordingly,

it is

ORDERED, that Defendant's motion for an Order dismissing Plaintiffs' Summons with Notice, is Denied; and

it is

ORDERED, that Plaintiffs' Complaint is hereby deemed timely served; and

it is

ORDERED, that Plaintiffs' counsel shall serve a copy of this Order with Notice of Entry upon Defendant's counsel with Proof of Service filed with the Court; and

it is

ORDERED, that Defendant is directed to serve an Answer within 45 days of being served with this Order; and

it is

ORDERED, that the Preliminary Conference Order signed September 2, 2020, shall still be valid with respect to this matter.

All applications not specifically addressed herein are denied.

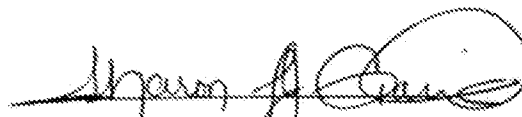
This constitutes the Decision and Order of the Court.

DATED: November 12, 2020
Mineola, New York

ENTERED

Nov 23 2020

NASSAU COUNTY
COUNTY CLERK'S OFFICE



HON. SHARON M. J. GIANELLI,
Justice of the Supreme Court

The conformed signature on this Order and copies thereof shall be deemed original.