

Pare v Pare

2020 NY Slip Op 35452(U)

May 12, 2020

Supreme Court, Richmond County

Docket Number: Index No. 152003/2018

Judge: Kim Dollard

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND**

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CLAIRE PARE, ESQ. and JOHN PARE (JOHN PARE as
involuntary Plaintiff),

DCM PART 4
Present:
Hon. Kim Dollard

Plaintiffs,

DECISION AND ORDER

-against-

Index No. 152003/2018

PAUL PARE, ANTHONY IMPERATO, III, MERRILL
LYNCH, PIERCE, FENNER & SMITH, INC., (MERRILL
LYNCH et al as nominal Defendant/ involuntary Plaintiff),
and necessary parties - MARIANNE PARE-AALBUE,
JANICE PARE-SHIRLEY, DONNA COULES and
ELAINE PARE-GULATI,

Motions No. 1 & 4

Defendants.

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The following papers numbered 1, 2, 3 and 4 were fully submitted:

Pages Numbered

Notice of Motion for a Default Judgment by plaintiff with supporting affirmation & Exhibits (Motion No. 1) (Dated: November 23, 2019).....	1
Notice of Cross-Motion of defendants, Paul Pare, Marianne Pare-Aalbue, Janice Pare-Shirley, Donna Coules and Elaine Pare-Gulati, to compel the plaintiff, to accept their answer to the amended complaint, with supporting documents and exhibits (Motion No. 4) (Dated: January 6, 2020).....	2
Plaintiff's Affirmation in Opposition to Cross-Motion to compel plaintiff to accept the defendants' amended answer and Reply (Dated: January 8, 2020).....	3
Plaintiff's Affirmation in Reply (Dated: January 8, 2020)	4

The plaintiff, Claire Pare, moves for an Order finding the defendants, PAUL PARE, MARIANNE PARE-AALBUE, JANICE PARE-SHIRLEY, DONNA COULES and ELAINE PARE-GULATI, in default for failing to timely answer the plaintiffs' amended complaint (Motion #1).

The defendants, PAUL PARE, MARIANNE PARE-AALBUE, JANICE PARE-SHIRLEY, DONNA COULES and ELAINE PARE-GULATI, move to compel the plaintiffs to accept the defendants verified amended answer to the amended complaint (Motion #4).

MOTION NO.: 1 AND MOTION NO.: 4

In Motion No. 1, the plaintiff, CLAIRE PARE, is moving for a default judgment against defendants, PAUL PARE, MARIANNE PARE-AALBUE, JANICE PARE-SHIRLEY, DONNA COULES and ELAINE PARE-GULATI. In Motion No. 4, those defendants cross-move to compel plaintiff, CLAIRE PARE, to accept their belated answer to the amended complaint.

The plaintiff filed a summons with notice on August 3, 2018. On December 3, 2018, the defendant, MERRILL LYNCH, served a notice of appearance and demand for a complaint. On December 21, 2018, the defendants, PAUL PARE, MARIANNE PARE-AALBUE, JANICE PARE-SHIRLEY, DONNA COULES and ELAINE PARE-GULATI, filed an answer to the complaint. Plaintiff, CLAIRE PARE, states that the AMENDED VERIFIED COMPLAINT, was served on all defendants on December 19, 2018. The defendants, PAUL PARE, MARIANNE PARE-AALBUE, JANICE PARE-SHIRLEY, DONNA COULES and ELAINE PARE-GULATI, were served by serving a copy upon Seth Coen, P.C. The Court notes that a copy of the amended complaint was not e-filed.

Mr. Coen, on behalf of defendants, PAUL PARE, MARIANNE PARE-AALBUE, JANICE PARE-SHIRLEY, DONNA COULES and ELAINE PARE-GULATI, answered the amended complaint on January 23, 2019, which he asserts was 14 days late. Mr. Coen further asserts that he mistakenly believed that he had 30 days plus 5 days for mailing or 35 days to answer the complaint. He further asserts that the amended complaint is the same as the initial complaint, except that it adds a cause of action for fraud against defendant, PAUL PARE.

Mr. Coen also annexes an affidavit of merit from defendant, PAUL PARE, who denies forgery or fraud and attests that he saw his father sign the document at issue.

A defendant who fails to timely answer the complaint must provide a reasonable excuse and proof of a meritorious defense [CPLR §5015(a)]. The determination of what constitutes a reasonable excuse lies within the court's discretion (see, Santiago v. NYCH&HC, 10 A.D.3d 393, 780 N.Y.S.2d 764, 2nd Dept., 2004). The court has discretion to accept law office failure as a reasonable excuse (Remote Meter Technology of N.Y., Inc. v. Aris Realty Corp., 83 A.D.3d 1030, 922 N.Y.S.2d 440, 2nd Dept., 2011).

In the present case, the court finds that the Mr. Coen and the defendants, PAUL PARE, MARIANNE PARE-AALBUE, JANICE PARE-SHIRLEY, DONNA COULES and ELAINE PARE-GULATI, established both a reasonable excuse and proof of a meritorious defense. The court also finds that these defendants answered the plaintiffs' first complaint in a timely manner and that there appears to be no e-filed amended complaint. Since CPLR §304 requires that actions be instituted by filing of a summons and complaint, it would also require that any amended summons and complaint likewise be filed. Since the plaintiff failed to file or e-file the amended complaint¹, this amendment was improper and may have added to the confusion in this matter with respect to calculating the time period to answer the amended complaint. Accordingly, the plaintiff is directed to e-file this amended complaint dated December 19, 2018.

Accordingly, the plaintiffs' motion (Motion No. 1) for a default judgment against defendants, PAUL PARE, MARIANNE PARE-AALBUE, JANICE PARE-SHIRLEY, DONNA COULES and ELAINE PARE-GULATI, is denied and the motion of the cross-moving defendants to compel the plaintiffs to accept their verified amended answer to the amended complaint (Motion #4), is granted.


¹. The amended complaint was e-filed as an exhibit to the motion, but never as a separate document.

Accordingly, it is

ORDERED that the plaintiffs motion for a default judgment is denied; and it is further,

ORDERED that the defendants' cross-motion to compel the plaintiffs to accept the answer to the amended complaint is granted.

ENTER,



Hon. Kim Dollard

Acting Supreme Court Justice

Dated: 5-12-20