

Catania v Liriano

2020 NY Slip Op 35520(U)

February 21, 2020

Supreme Court, Bronx County

Docket Number: Index No. 21709/2019E

Judge: Julia I. Rodriguez

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX

-----X **Index No. 21709/2019E**

Patricia Catania,
Plaintiff,

-against-

DECISION & ORDER

Mercedes Liriano, William Woodruff,
Jacinth Scott, Jasmine Dickson, Janella Hinds,
United Federation of Teachers Union,

Defendants.

Present:
Hon. Julia I. Rodriguez
Supreme Court Justice

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Recitation, as required by CPLR 2219(a), of the papers considered in review of defendants' motion to dismiss the complaint, pursuant to CPLR 3012(b) and CPLR 3211(a)(8), and plaintiff's cross-motion for a default judgment, pursuant to CPLR 3012(b) and CPLR 3215.

<u>Papers Submitted</u>	<u>Numbered</u>
Notice of Motion, Affirmation & Exhibits	1
Memorandum of Law	2
Notice of Cross-Motion, Affirmation & Exhibits	3
Memorandum of Law	4
Murphy Affirmation in Further Support of Motion and in Opposition to Cross-Motion & Exhibits	5
Pl. Reply Affirmation	6
Pl. Reply Memorandum of Law	7

The Complaint in this action alleges causes of action for defamation/libel/slander, intentional infliction of emotional distress, negligent infliction of emotional distress, negligence, gross negligence, prima facie tort, conspiracy, and respondeat superior.

Defendants William Woodruff, Janella Hinds and the United Federation of Teachers Union ("UFT Defendants") now move for an order dismissing the complaint on the grounds that: (1) plaintiff failed to properly serve the complaint, pursuant to CPLR 3012(b), and (2) the court lacks personal jurisdiction over the UFT Defendants, pursuant to CPLR 3211(a)(8).

Plaintiff cross-moves, pursuant to CPLR 3012(a) and CPLR 3215, for a default judgment against the UFT Defendants based upon their failure to timely appear, demand a complaint or answer the complaint.

The evidence submitted by the parties establishes the following:

On May 22, 2019, Defendants Janella Hinds and United Federation of Teachers Union were served with a Summons with Notice in the instant action. On May 28, 2019, Defendant William Woodruff was served with the Summons with Notice.

On May 31, 2019, the UFT Defendants served a Demand for Complaint upon Plaintiff's counsel which directed that a copy of the complaint be served upon the UFT Defendants' counsel, Robert T. Reilly, at his office located at 52 Broadway, New York, New York.

On June 22, 2019, a Complaint was filed via the New York State Electronic Filing System (E-File).

On June 24, 2019, a Complaint was mailed to Robert T. Reilly, Esq. at 52 Broadway, 9th floor, New York, NY.

On July 1, 2019, the law office of Robert T. Reilly received the Complaint.

On July 22, 2019, the UFT Defendants served their CPLR 3211 motion.

* * * * *

If the complaint is not served with the summons, the defendant may serve a written demand for the complaint within 20 days of service of the summons. CPLR 3012(b). Service of the complaint may be made upon a party's attorney by mailing the complaint to the attorney at the address designated by that attorney for that purpose and, where a period of time prescribed by law is measured from the service of a paper and service is by mail, five days shall be added to the prescribed period if the mailing is within the state. CPLR 2103(b)(2). Citing CPLR 2103(b)(2), in her affirmation, Meaghan Murphy, of counsel to Robert T. Reilly, contends that plaintiff was required to serve the Complaint on the UFT Defendants by June 25, 2019. Yet, in a memorandum of law prepared by Ms. Murphy and Christopher Lewis, also of counsel to Robert T. Reilly, the UFT Defendants contend that "there is no evidence, indeed no claim, that defendants designated their attorney to accept service of process on behalf of defendants" and, therefore, service upon Robert T. Reilly did not "comport with the strictures of the CPLR." Defendants cannot have it both ways. The Demand for Complaint is either valid or not. If it is valid, then service of the Complaint as directed therein was proper. If it is not valid, then the UFT Defendants have failed to timely appear in this action. In the absence of an affidavit from

any of the defendants indicating that Robert T. Reilly was not authorized to accept service of the complaint on their behalf, the Court finds that service upon the UFT Defendants by mailing the Complaint to Robert T. Reilly was proper and conferred jurisdiction to the Court over those defendants.

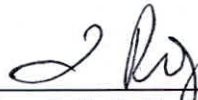
Service of a written demand for the complaint shall extend the time to appear until 20 days after service of the complaint. CPLR 3012(b). The defendant appears by serving an answer or a notice of appearance, or by making a motion which has the effect of extending the time to answer. Service of a notice of motion under subdivision (a) or (b) of CPLR 3211 before service of a pleading responsive to the cause of action or defense sought to be dismissed extends the time to serve the pleading until ten days after service of notice of entry of the order. CPLR 3211(f). As the Complaint was received on July 1, 2019, the UFT Defendants' time to appear expired on July 21, 2019. However, since July 21, 2019 was a Sunday, service of the notice of motion on July 22, 2019 was timely.

Based upon the foregoing, the motion brought by Defendants William Woodruff, Janella Hinds and United Federation of Teachers Union to dismiss the Complaint, pursuant to CPLR 3012(b) and CPLR 3211(a)(8), is **denied**.

Plaintiff's cross-motion for a default judgment, pursuant to CPLR 3012(a) and CPLR 3215, is **denied**.

The UFT Defendants shall serve a copy of this Order with Notice of Entry upon all parties forthwith, and may serve an answer to the Complaint within 20 days after service of the Order with Notice of Entry.

Dated: Bronx, New York
February 21, 2020



Hon. Julia I. Rodriguez, J.S.C.