

| |
|--|
| Halabi v City of New York |
| 2021 NY Slip Op 30623(U) |
| March 4, 2021 |
| Supreme Court, New York County |
| Docket Number: 155116/2020 |
| Judge: J. Machelle Sweeting |
| Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service. |
| This opinion is uncorrected and not selected for official publication. |

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

PRESENT: HON. J. MACHELLE SWEETING PART IAS MOTION 62

Justice

-----X

INDEX NO. 155116/2020

NADA HALABI, MARWAN HALABI

MOTION DATE 10/30/2020

Plaintiff,

MOTION SEQ. NO. 001

- v -

THE CITY OF NEW YORK, NEW YORK CITY TRANSIT
AUTHORITY,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22

were read on this motion to/for JUDGMENT - DEFAULT.

Pending before the court is a motion filed by plaintiffs seeking an order: (a) pursuant to New York Civil Practice Law and Rules (CPLR) §3215, finding defendant City of New York (the “City”) in default, granting default judgment against the City and setting a hearing date for an inquest to calculate and assess damages and to reduce plaintiffs’ claims to a sum certain; (b) pursuant to CPLR §3215, finding defendant New York City Transit Authority (“NYCTA”) in default, granting default judgment against defendant NYCTA and setting a hearing date for an inquest to calculate and assess damages and reduce plaintiffs’ claims to a sum certain; and (c) referring this matter to a Referee for assessment and computation of damages, if necessary.

Also pending before the court is a cross-motion filed by the defendants (collectively, “Transit”) opposing plaintiffs’ motion, and seeking an order pursuant to CPLR §3012(d) extending the time for Transit to Answer and/or an order deeming the answer served on November 2, 2020, via e-filing on New York State Courts Electronic Filing (“NYSCEF”) as timely *nunc pro tunc*, and

denying plaintiffs' motion for default as moot. Upon the forgoing documents, plaintiffs' motion is DENIED and Transit's cross-motion is GRANTED.

Relevant Facts

Pursuant to CPLR §3012, service of an answer shall be made within thirty days after service is complete. Here, plaintiffs filed a complaint and served the City on August 11, 2020 and served NYCTA on August 14, 2020. Plaintiffs' counsel consented to an extension of 40 days for defendant NYCTA, to file its answer. This document (the "extension document") is uploaded as Document #4 on NYCEF.¹

The terms of the extension document provide that defendant may have "40 days time from date within which to answer." These terms are unclear. Printed at the top of the extension document is the date of September 3, 2020. Handwritten on the bottom of the extension document next to the signature of plaintiffs' counsel is the date of September 24, 2020. It is unclear from which date the 40-day extension period was to commence. If it commenced on September 3, 2020, then the new deadline would have been October 13, 2020. However, if it commenced on September 24, 2020, the new deadline would have been November 3, 2020.

On October 30, 2020, plaintiffs filed the instant motion for a default judgment against both defendants. On November 2, 2020, Transit filed an answer on behalf of both defendants.

With respect to these issues, Transit argues that: "Defendants' delay in joining issue was the result of the heavy caseload currently being handled by this office, compounded by Law

¹ The extension document does not specifically name the City and was not executed by counsel for the defendants. Presumably, it applied to both defendants, as an answer was subsequently served and filed by the same attorney on behalf of both defendants NYCTA and the City.

Department personnel working remotely either full - or part-time during the ongoing pandemic.

The delay was in no way willful.”

Conclusions of Law

The Appellate Division, First Department has held:

Repeatedly, it has been held that it is the general policy of the courts to permit actions to be determined by a trial on the merits wherever possible and for that purpose a liberal policy is adopted with respect to opening default judgments in furtherance of justice to the end that the parties may have their day in court to litigate the issues . . .

38 Holding Corp. v. New York, 179 A.D.2d 486 (App. Div. 1st Dept. 1992); *See also* Gluck v. McDonough, 139 A.D.3d 628 (2016) (referencing that “strong public policy favors resolving cases on the merits”) and Acosta v. Riverdale Dev., LLC, 72 A.D.3d 525 (2010) (“Finally, vacatur here was consistent with the strong public policy favoring resolution of cases on their merits”).

Based on the ambiguous terms of the extension document, it is unclear whether their filing was actually late. As noted above, if the 40-day extension period commenced on September 24, 2020, then the new deadline was not until November 3, 2020. Therefore, Transit’s November 2, 2020 filing on behalf of both defendants would have been timely.

Finally, this court notes the ongoing Covid-19 pandemic and its impact, as reported by Transit, on attorneys in New York State. Importantly, here, plaintiffs do not plead, nor have they alleged that they suffered any prejudice due to the delay.

Accordingly, plaintiffs’ motion for default judgment is denied and Transit’s cross motion is granted. The answer served by Transit on November 2, 2020 is hereby deemed timely *nunc pro tunc*.

This is the order of the court.

3/4/2021
DATE


J. MACHELLE SWEETING, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: