

Jones v City of New York
2021 NY Slip Op 31757(U)
May 24, 2021
Supreme Court, New York County
Docket Number: 151237/2021
Judge: J. Mabelle Sweeting
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

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

Justice

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INDEX NO. 151237/2021

DEDRA JONES, on behalf of D.D., a minor

MOTION DATE 03/24/2021

Plaintiff,

MOTION SEQ. NO. 001

- v -

THE CITY OF NEW YORK,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

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

Pending before the court is a motion wherein plaintiff seeks an order, pursuant to CPLR §3215, for a default judgment against the defendant for the relief demanded in the Complaint. Also pending is a cross-motion filed by the defendant City of New York (the “City”) seeking a motion pursuant to CPLR §3012(d), §2004 and §2005 compelling plaintiff to accept the City’s Answer to the complaint and deeming it served *nunc pro tunc*. The City also seeks an order pursuant to CPLR §3211(a)(7) dismissing the Complaint in its entirety against the City, for failure to state a cause of action in that the City is an improper party in this matter. Upon the foregoing documents, the plaintiff’s motion is DENIED and the City’s cross-motion is GRANTED.

In the underlying action here, the infant plaintiff D.D., while a student at the Mott Hall II school located at 234 West 109th Street, in the County, City and State of New York, was required to remain after school by a teacher, and was in the school's stairwell when she was hit in the face by a door on the 5th floor. The gravamen of plaintiff’s complaint against the City is that the City was negligent in maintaining the subject door.

Plaintiff's Motion for a Default

Here, it is undisputed that plaintiff served the summons and complaint on or about February 18, 2021 and that pursuant to CPLR §3012(a), the City's answer was to be served within twenty days, of that date, on March 10, 2021. The City interposed an Answer on April 2, 2021, which was twenty-three days beyond the statutory deadline.

The City argues that there was a reasonable excuse for the delay in serving the Answer, based on law office failure. Specifically, the City argues that the twenty-three day delay was a direct result of the high volume of cases that were commenced against the City and the limited number of personnel to process the cases, which was exacerbated by the COVID-19 pandemic. The City argues that since March 23, 2020, many City agency employees have been working from home and do not have access to the full range of agency databases or to any hard-copy records. They also argue that front-line agencies have redeployed many employees to COVID19-related activities and their ability to engage in civil litigation activities is significantly limited.

The Appellate Division, First Department has repeatedly held:

[t]hat 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”).

Importantly, as the City aptly argues, plaintiff fails to allege, and the record is devoid of any evidence, that plaintiff was prejudiced in any way by the delay. Accordingly, and given the totality of the circumstances here, this court DENIES the motion for a default judgment against the City and finds that the City's Answer to the plaintiffs' Complaint was properly served *nunc pro tunc*.


City's Cross-Motion Seeking Dismissal

Here, the City argues that the City is an out of possession landowner of the subject premises and cannot be held liable for the infant plaintiff's alleged injuries. The City denies operation and maintenance of the premises and argues that under the New York Education law, the New York City Board of Education/Department of Education ("DOE"), (which is not a party in this action), has the legal duty to control, maintain, and manage all property used for educational purposes. The City further argues, pursuant to New York City Charter §521, that although the City holds title to public school property, it is under the care and control of the DOE for the purposes of education.

As the City correctly argues, it is well established that the City of New York and the Department of Education are separate legal entities, and that the City cannot be held liable for torts committed by the DOE and its employees. *See, e.g. Perez ex rel. Torres v City of New York*, 41 AD3d 378 (Sup. C. App. Div. 1st Dept 2007):

While the 2002 amendments to the Education Law [...] providing for greater mayoral control significantly limited the power of the Board of Education [...], the City and the Board remain separate legal entities [...]. The legislative changes do not abrogate the statutory scheme for bringing lawsuits arising out of torts allegedly committed by the Board and its employees, and the City cannot be held liable for those alleged torts *[internal citations omitted]*.

Accordingly, the City’s motion is GRANTED on the merits, and this action is dismissed in its entirety, with prejudice, against the City.

<u>5/24/2021</u> DATE	 J. MACHELLE SWEETING, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	<input checked="" type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	<input type="checkbox"/> FIDUCIARY APPOINTMENT
				<input type="checkbox"/> REFERENCE