

National Gen. Ins. Co. v Lex Interiors Ltd.
2022 NY Slip Op 32366(U)
July 20, 2022
Supreme Court, New York County
Docket Number: Index No. 158103/2020
Judge: William Perry
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. WILLIAM PERRY PART 23

Justice

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INDEX NO. 158103/2020
NATIONAL GENERAL INSURANCE CO. A/S/O STEPHEN LEFFLER
MOTION DATE 02/07/2022
Plaintiff, MOTION SEQ. NO. 001

- v -

LEX INTERIORS LTD,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10 were read on this motion to/for JUDGMENT - DEFAULT.

In this subrogation action, plaintiff National General Insurance Co. a/s/o Stephen Leffler moves, pursuant to CPLR 3215, for a default judgment against defendant Lex Interiors Ltd. The motion is supported by copies of the summons and complaint, affidavits of service and an affidavit from plaintiff. Although defendant has interposed an untimely answer dated February 14, 2022 (NYSCEF Doc No. 11), defendant has not submitted any opposition to the motion or submitted a cross motion to extend its time to answer and compel plaintiff to accept its late answer.

As a preliminary matter, CPLR 3215 (c) provides that proceedings for entry of a default judgment must be taken within one year after the default otherwise the “the court ... shall dismiss the complaint as abandoned, without costs, upon its own initiative or on motion, unless sufficient cause is shown why the complaint should not be dismissed.” According to the affidavit of service sworn to on November 10, 2020, plaintiff served defendant with process on November 10, 2020 by delivering the summons, complaint and notice of electronic filing to the Secretary of State pursuant to Business Corporation Law § 306 (NYSCEF Doc No. Joshua I.

Aron [Aron] affirmation, Ex B at 1). Because service upon a corporation is complete when the Secretary of State is served (*see* Business Corporation Law § 306 [b] [1]), defendant was required to answer or appear within 30 days of November 10, 2020 (*see* CPLR 320 [a]). Defendant did not timely answer or otherwise appear or move to extend its time to do so (*see* CPLR 3012). Plaintiff, though, did not serve or file the instant motion until February 7, 2022, nearly fourteen months after defendant's default.

As noted above, the plaintiff must demonstrate sufficient cause why the complaint should not be dismissed as abandoned. "Sufficient cause requires 'a reasonable excuse for the delay in timely moving for a default judgment and to demonstrate that the cause of action is potentially meritorious'" (*U.S. Bank N.A. v Nunez*, 190 AD3d 660, 661 [1st Dept 2021] [citation omitted]). It is within the court's discretion to determine whether the excuse proffered by plaintiff is reasonable (*see LaSalle Bank N.A. v Carlton*, 204 AD3d 985, 987 [2d Dept 2022]).

Here, plaintiff attributes the delay to "complications brought on by the Covid-19 pandemic, including furloughed employee [sic] and working remotely. The general practices and procedures of filing suit were more challenging, including verifying service, obtaining the Affidavit of Fact from clients facing similar challenges and obtaining account statements supporting the claim" (NYSCEF Doc No. 4, Aron affirmation, ¶ 13). The court finds that this statement is wholly conclusory and lacks specific detail (*see Discover Bank v Duncan*, 2022 NY Misc LEXIS 3057, *3 [Sup Ct, Suffolk County, May 18, 2022, St. George, J., index No. 623128/2019] [dismissing a complaint as abandoned where the plaintiff's claim of delay attributed to the COVID-19 pandemic was "restricted to [a] single, conclusory sentence in ... counsel's affirmation"]). Critically, the affidavit submitted in support of the motion is sworn to

on October 15, 2021¹ (NYSCEF Doc No. 8, Aron affirmation, Ex D at 2). Plaintiff offers no explanation as to why it waited an additional four months to move for relief (*see Hertz Corp. v Hall*, 75 Misc 3d 1216[A], 2022 NY Slip Op 50516[U], *2 [Civ Ct, Bronx County 2022] [dismissing a complaint as abandoned where the plaintiff, who cited the COVID-19 pandemic as the reason for the delay, waited eight months after obtaining the affidavit of fact, to which all relevant documentary evidence was attached, before moving for a default judgment]; *American Express Natl. Bank v Aziz*, 2022 NY Slip Op 50533[U], *3 [Civ Ct, Richmond County 2022] [denying the plaintiff's motion for a default judgment and dismissing the complaint as abandoned because the COVID-19 health crisis had significantly abated by the time the plaintiff moved for a default judgment]). As such, the court finds that plaintiff has failed to demonstrate a reasonable excuse for the delay (*see Seide v Calderon*, 126 AD3d 417, 417 [1st Dept 2015]). Plaintiff is not entitled to entry of a default judgment against defendant, and the court dismisses the complaint as abandoned under CPLR 3215 (c).

Accordingly, it is hereby

ORDERED that the motion brought by plaintiff National General Insurance Co. a/s/o Stephen Leffler for leave to enter a default judgment against defendant Lex Interiors Ltd. (motion sequence no. 001) is denied; and it is further

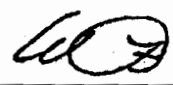
ORDERED that, pursuant to CPLR 3215 (c), the complaint is dismissed as abandoned; and it is further

ORDERED that the Clerk shall enter judgment accordingly; and it is further

¹ The affidavit itself appears to be unsigned, and the handwritten portions of it are largely illegible.

ORDERED that, within 20 days from the date of entry of this order, plaintiff shall serve a copy of this order with notice of entry on defendant and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

<u>7/20/2022</u> DATE	 WILLIAM PERRY, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE