

Kazantis v Sommers
2022 NY Slip Op 33622(U)
October 11, 2022
Supreme Court, New York County
Docket Number: Index No. 160233/2018
Judge: James G. Clynnes
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. JAMES G. CLYNES PART 22M

Justice

-----X

STEPHEN KAZANTIS,
Plaintiff,

- v -

GARY P SOMMERS, DENISE RODRIGUEZ, HANN AUTO
TRUST, JOHN DOES 1-10 (FICTICIOUS INDIVIDUALS), XYZ
CORPS 1-10 (FICTICIOUS ENTITIES),

Defendant.

-----X

GARY SOMMERS
Plaintiff,

-against-

DENISE RODRIGUEZ
Defendant.

-----X

INDEX NO. 160233/2018
MOTION DATE 05/17/2022, 05/26/2022
MOTION SEQ. NO. 002 003

DECISION + ORDER ON MOTION

Third-Party
Index No. 595679/2022

The following e-filed documents, listed by NYSCEF document number (Motion 002) 28, 29, 30, 31, 32, 33, 34, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51

were read on this motion to/for JUDGMENT - DEFAULT

The following e-filed documents, listed by NYSCEF document number (Motion 003) 38, 39, 58, 59, 60, 61, 62, 63

were read on this motion to/for DISMISS

Upon the foregoing documents, Plaintiff's motion pursuant to CPLR 3215 for a default judgment against defendants Hann Auto Trust and Denise Rodriguez and Rodriguez's cross-motion to dismiss (Motion Sequence #2) and Hann Auto Trust's motion to dismiss (Motion Sequence #3) are consolidated for decision and decided as follows:

Plaintiff moves for default judgment against defendants Hann Auto Trust (Hann Auto) and Denise Rodriguez (Rodriguez), contending that his motion for default judgment, brought more than one year after the default, should be granted because he proffers a "reasonable excuse" for the delay and that his claims are meritorious. Rodriguez filed a cross-motion to dismiss the claim

against her pursuant to CPLR 3211 (a) (8) and 3215 (c), contending that she was not properly served with the Summons and Complaint. Hann Auto filed a motion to dismiss pursuant to CPLR 3211 (a) (8) and 3215 (c) and CPLR 3211 (a) (7) and the Graves Amendment, 49 USC 0106.

Motion Sequence #1

In order to effectuate proper service of a summons and complaint to a non-resident party as related to motor vehicle accidents, the plaintiff must comply with the requirements set forth by New York State Vehicle and Traffic Law (VTL) 253, which states that service of a non-resident party must be made to the Secretary of State in Albany as well as directly to the defendant by certified or registered mail with return receipt requested. VTL 253 (2) also requires that the “plaintiff shall file with the clerk of the court in which the action is pending...an affidavit of compliance, a copy of the summons and complaint, and either a return receipt purporting to be signed by the defendant or a person qualified to receive his certified mail or registered mail.”

Here, the service of process as to Rodriguez was defective. Rodriguez is a resident of New Jersey and as such VTL 253 applies. The affidavit of service as to Rodriguez was not filed with the court until May 17, 2022, despite service purportedly being on November 2, 2018. Thus, at the time of default, Rodriguez was not served. Even if the court were to consider the documents filed, Plaintiff has failed to comply with the third prong of VTL 253 (2).

Pursuant to CPLR 3215 (c), “(i)f the plaintiff fails to take proceedings for the entry of judgment within one year after a default, the court shall not enter judgment but 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.” The policy underlying the statute is to prevent parties who have asserted claims from unreasonably delaying the termination of actions, and to avoid inquests on stale claims. (*Giglio v. NTIMP, Inc.*, 86 AD3d 301 [2d Dept. 2011]).

The one exception to CPLR 3215 (c) is that the failure to timely seek a default on an unanswered complaint may be excused if sufficient cause is shown why the complaint should not be dismissed. Sufficient cause exists where (1) the failure to seek a default judgment within one year after the default is excusable, and (2) the cause of action is meritorious. See *Herzbrun v. Levine*, 259 N.Y.S.2d 237 [1st Dept 1965]. To establish ‘sufficient cause,’ the plaintiff must demonstrate that it had a reasonable excuse for the delay in taking proceedings for entry of a default judgment and that it has a potentially meritorious action.

Here, Plaintiff attributes the cause of the delay to law office failure. Although the court has discretion to accept law office failure as a reasonable excuse, a claim of law office failure should be supported by a detailed and credible explanation of the default at issue. (*Galaxy Gen. Contr. Corp. v. 2201 7th Ave. Realty Llc*, 95 A.D.3d 789 [1st Dept 2012]). Plaintiff asserts that the attorney who was handling this action (and all actions within the law firm representing Plaintiff) “without warning, abruptly left the firm” in September 2021. (Sekas Affidavit). Plaintiff further points to the firm’s case manager ceasing her employment with the firm in October 2021 as an additional law office failure (Sekas Affidavit). However, Plaintiff’s claim of law office failure is insufficient as both of these instances occurred after defendants Hann Auto and Rodriguez defaulted.

Plaintiff also attributes the cause of delay to the COVID-19 pandemic without providing additional detail as to how this litigation was burdened by the pandemic. This general reasoning is not sufficient to constitute a reasonable excuse for the delay. While the Court recognizes that the COVID-19 pandemic posed challenges to the practice of law, parties cannot rely only on generalized statements regarding the pandemic to show that they have a reasonable excuse for failing to timely move for a default judgment.¹

Plaintiff has not shown sufficient cause for its failure to move for default judgment within one year of the expiration of defendants' defaults. As such, Plaintiff’s motion for default judgment against defendants Hann Auto Trust and Denise Rodriguez is denied and Rodriguez’s cross-motion to dismiss the complaint against her is granted.

Motion Sequence #2

Defendant Hann Auto’s motion to dismiss pursuant to CPLR 3211 (a) (8) and 3215 (c) and CPLR 3211 (a) (7) and the Graves Amendment, 49 USC 0106 is also granted.

The Graves Amendment, 49 USC 30106, regarding rented or leased motor vehicle safety and responsibility, bars vicarious liability actions against professional lessors and renters of vehicles, as would otherwise be permitted under Vehicle and Traffic Law 388. Absent some evidence of a lessor's failure to properly maintain a vehicle which it has expressly agreed to maintain pursuant to a lease agreement, or some similar active negligence on the part of the lessor,

¹ CPLR 3215 (f) requires proof of service of the summons and complaint on an application for default judgment. The court has found that Defendant Rodriguez was not served. However, even if the court did not find that service on Defendant Rodriguez was defective, the failure to serve would have been prior to the COVID-19 pandemic shutdown in March of 2020.

the negligence clause of the Graves Amendment 49 USC 30106 (a) (2) is rarely applicable and should be cautiously applied in light of Congress' clear intent to forestall suits against vehicle leasing companies. See *Hernandez v. Sanchez*, 40 A.D.3d 446 [1st Dept 2007]; *Collazo v MTA-New York City Tr.*, 74 A.D.3d 642 [1st Dept 2010].

Here, Defendant Hann Auto has sufficiently established that Hann Auto Trust is in the business of leasing vehicles. The vehicle in this case was owned and leased by Hann Auto. Defendant establishes that the vehicle driven by Rodriguez was leased to her and that the collision occurred during that period of the lease. Defendant also submitted evidence that under the lease agreement, the lessee, Rodriguez, was solely responsible for the maintenance of the vehicle during the term of the lease. Hann Auto is therefore entitled to the protections of the Graves Amendment.

As such, Hann Auto's motion to dismiss is granted.

Accordingly, it is

ORDERED that Plaintiff's motion for default judgment under CPLR 3215 is denied, and the complaint is dismissed as against defendants Hann Auto Trust and Denise Rodriguez; and it is further

ORDERED that the cross-motion of defendant Denise Rodriguez and the motion of defendant Hann Auto Trust to dismiss the complaint herein are granted and the complaint is dismissed in its entirety as against said defendants, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendant; and it is further

ORDERED that the caption be amended to reflect the dismissals and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving parties shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office 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); and it is further

ORDERED that within 30 days of entry, movant-defendants shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision and Order of the Court.

10/11/2022
DATE

James G. Clynes
JAMES G. CLYNES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE