

Kent v Jones

2022 NY Slip Op 35022(U)

April 1, 2022

Supreme Court, Queens County

Docket Number: Index No. 712125/20

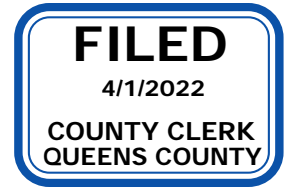
Judge: Allan B. Weiss

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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY



Present: Honorable ALLAN B. WEISS IAS PART 2
Justice

DONNA KENT, individually and as personal
representative of the late Sandor Szabo,

Index No. 712125/20

Plaintiff,

Motion Date: 1/19/22

-against-

Motion Seq. No. 8

JAMILL JONES; WAKE FOREST
UNIVERSITY; and DOES 1 through 25,
inclusive,

Defendants.

The papers numbered EF Document Numbers 75-91, found on NYSCEF, were read on the motion for a default judgment against defendant Jamill Jones (“Jones”), and the cross motion by defendant Jones to dismiss the complaint or extend the time to answer.

First, as an initial matter, in light of the dismissal of this action against Wake Forest University, in a prior decision by this Court dated and entered on March 11, 2021 [EF Doc. No. 68], the Court amends the caption to read:

DONNA KENT, individually and as personal
representative of the late Sandor Szabo,

Index No. 712125/20

Plaintiff,

-against-

JAMILL JONES,

Defendant.

After a criminal trial before a jury, in January-February, 2020 [*see*, Transcript of Proceedings at EF Doc. No. 46], Jones was convicted of third-degree assault, a class A misdemeanor, for a punch that resulted in the death of Sandor Szabo (“Szabo”). Jones and his girlfriend had reportedly seen Szabo, who was intoxicated, break the rear window of Jones’s vehicle. Jones pursued Szabo and struck him once, resulting in Szabo’s death. As revealed by the trial transcript, the judge, at the criminal trial, permitted Jones to offer a defense of justification, Jones testified in his own behalf, the trial judge gave a jury instruction on justification, and the jury, by their verdict, rejected the defense. *See*, Transcript of Proceedings at EF Doc. No. 46.

The plaintiff moves for a default judgment against Jones, for his failure to date to file an answer. Jones’s counsel argues law office failure by the unspecified departure of two unnamed, unidentified attorneys from the law firm representing Jones who allegedly were handling the defense of this civil action. Counsel then argues that self-defense is the defendant’s meritorious defense. *See, Citicorp Tr. Bank, FSB v Makkas*, 127 A.D.3d 907, 908 (2nd Dept. 2015); *Indrunas v. Escher Const. Corp.*, 277 A.D.2d 28, 29 (1st Dept. 2000).

The argument, however, is weak factually since the same partner who signed and filed the present cross-motion, filed on January 4, 2022 [EF Doc. Nos. 28-33], previously signed and filed the notice of motion to dismiss on September 28, 2020 [EF Doc. Nos. 86-88]. The effort to deflect responsibility to unnamed lawyers, without providing details, is not credible where the same partner has remained on the case throughout all relevant proceedings. Jones’s claim of law office failure based on the alleged, unspecified departure of two lawyers - - where the same partner was present at all relevant times litigating this case for Jones - - is insufficient to establish a reasonable excuse. *See, Bura v. Westfair Corp.*, 190 A.D.3d 679, 680 (2nd Dept.), *lv. to appeal dismissed*, 37 N.Y.3d 935 (2021); *Trokaik Realty, Inc. v HP Yuco, HDFC, Inc.*, 188 A.D.3d 1281, 1282 (2nd Dept. 2020); *Islam v. HPENY Hous. Dev. Fund Co., Inc.*, 182 A.D.3d 585 (2nd Dept. 2020); *Bank of N.Y. Mellon v. Ruci*, 168 A.D.3d 799, 800 (2nd Dept. 2019).

No affidavit of merit, moreover, is submitted by Jones. Such failure would constitute independent grounds for the granting of the plaintiff’s motion. *See, National Loan Investors, L.P. v. Bruno*, 191 A.D.3d 999 (2nd Dept. 2021). Even if Jones had submitted an affidavit providing “self-defense” as an excuse, Jones,

under both res judicata and collateral estoppel principles, would be barred from asserting it, as a matter of law, since a jury had rejected the defense of justification or “self-defense.” *See, Hartman v. Milbel Enterprises, Inc.*, 130 A.D.3d 978 (2nd Dept. 2015); *City of New York v College. Point Sports Assn., Inc.*, 61 A.D.3d 33, 46 (2nd Dept. 2009).

The first branch of the plaintiff’s motion for a default judgment against Jones is granted.

The second branch of the plaintiff’s motion for costs and attorneys’ fees are denied.

Jones’s cross-motion is without merit. The first branch of the cross-motion seeks dismissal of the action for the alleged failure by plaintiff to pursue a default judgment within one year. *See, CPLR 3215(c)*. The defendant is incorrect factually. Jones filed a motion to dismiss under Motion Sequence Number 5 on September 23, 2020. This Court’s decision, on his motion and another motion by co-defendant Wake Forest University was issued and entered on March 11, 2021. Jones should have filed his answer in this action promptly after the Court dismissed his motion. Jones did not file any answer. Plaintiff filed the present motion on November 10, 2021, showing plaintiff’s action - - not inaction as incorrectly represented by Jones. Indeed, the same partner who has been handling Jones’s defense, on Nov. 30, 2021, requested an adjournment of the Compliance Conference that was scheduled by the Compliance Part Judge for Nov. 30, 2021, citing the fact that plaintiff had just recently filed a motion for a default judgment. *See, EF Doc. No. 85*. The first branch of Jones’s cross-motion is denied.


The second branch of the cross-motion to extend the time to answer is denied, since the defendant, as a matter of law, as discussed above, cannot establish a meritorious defense. *See, Mega Const. Corp. v. Benson Park Assoc., LLC*, 60 A.D.3d 826, 827 (2nd Dept. 2009). The cross-motion refers to compelling the plaintiff to accept a late answer, but no proposed answer was, in fact, filed with the cross-motion.

The plaintiff’s motion is granted in all respects, and Jones’s cross-motion, in all respects, is denied. The plaintiff is granted a default judgment only on the issue of liability. After serving Jones with a notice of entry of this order, the

plaintiff shall then file a Note of Issue and a Statement of Readiness. After compliance with all of the Rules of the Court, the plaintiff shall serve a copy of this Order and proof of filing the Note of Issue upon the Clerk of the Trial Scheduling Part ("TSP") within forty-five (45) days of the date hereof. An inquest will be scheduled by the TSP Clerk.

A copy of this Order and a notice containing the date of the inquest shall also be mailed to Jones's counsel by regular mail. The plaintiff shall file on NYSCEF proof of such mailing and also provide proof of said mailing at the time of the inquest.

Dated: April / , 2022
D#64


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J.S.C.