

Appel v New York City Police Dept.

2023 NY Slip Op 30784(U)

March 16, 2023

Supreme Court, New York County

Docket Number: Index No. 155293/2022

Judge: Judy H. Kim

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JUDY H. KIM PART 05RCP

Justice

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RONIT D. APPEL,

Plaintiff,

- v -

NEW YORK CITY POLICE DEPARTMENT, NYPD
SERGEANT CHRISTOPHER N. SAINTU, NYPD OFFICER
KELVIN I. CRUZ, JONATHAN FOX, ALEXANDER
VARGAS, MOUNT SINAI HEALTH SYSTEM, INC.,
MICHOTTE NABUA, DAVID ADESUYAN, SARA HADI,
ARTHUR YING YOUNG FU, RACHAEL HEYDEN, ERICA
LIU, ST. LUKE'S ROOSEVELT HOSPITAL CENTER
FOUNDATION, INC. A/K/A MOUNT SINAI WEST, SABRINA
LEFCOCHILOSFOGELQUIST, JOHN DOES,

Defendants.

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INDEX NO. 155293/2022
MOTION DATE N/A
MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 139

were read on this motion to/for COMPEL

Upon the foregoing documents, defendants the New York City Police Department, NYPD Sergeant Christopher N. Saintu, and Officer Kelvin I. Cruz (collectively, the "NYPD Defendants") and the City of New York (the "City"), move for an order compelling plaintiff to accept service of their answer filed on October 21, 2022. This motion is granted for the reasons set forth below.

PROCEDURAL HISTORY

Plaintiff commenced this action for, inter alia, false arrest and false imprisonment by filing a summons and verified complaint on June 23, 2022 (NYSCEF Doc. No. 1). On August 16, 2022 plaintiff filed a supplemental summons and amended verified complaint, without leave of the Court. This amended verified complaint was served on defendants Saintu and Cruz, pursuant to

CPLR §308(2), on August 29, 2022 (NYSCEF Doc Nos. 27-28). The affidavits of service attesting to this service were filed with the Court on September 13, 2022. The City served an answer to the amended complaint on behalf of itself and the NYPD Defendants on October 21, 2022 (NYSCEF Doc. No. 94). On that same date, plaintiff filed a Notice of Rejection rejecting this answer as improperly verified (NYSCEF Doc. No. 95).

The City now moves to compel plaintiff to accept its answer on the grounds that any delay in interposing the answer was reasonable and did not prejudice plaintiff, as discovery has not commenced. In opposition, plaintiff argues that the answer does not make it clear that Corporation Counsel represents the NYPD Defendants and that the answer's verification by Corporation Counsel was inadequate.

DISCUSSION

“Upon the application of a party, the court may ... compel the acceptance of a pleading untimely served, upon such terms as may be just and upon a showing of reasonable excuse for delay ...” (CPLR §3012[d]). The factors to be considered in determining such an application include “the length of the delay, the excuse offered, the extent to which the delay was willful, the possibility of prejudice to adverse parties, and the potential merits of any defense” (Emigrant Bank v Rosabianca, 156 AD3d 468, 472-473 [1st Dept 2017]; see also Bey v Sobro Local Dev. Corp., 177 AD3d 448, 449 [1st Dept 2019])

As a threshold matter, to the Court rejects the City's argument that the Amended Complaint is a nullity because it was filed more than twenty days after service of the original complaint¹ (See NYSCEF Doc. No. 134 [Abdelaal Reply Affirm. at ¶38]). The City has waived any such objection

¹ To the extent the City argues that the instant motion seeks to compel plaintiff to accept an untimely answer to her original complaint, this is belied by the fact that the proposed answer in question is expressly denominated as one directed to the amended complaint.

by failing to immediately reject the amended complaint and instead interposing an answer directed to the amended complaint (See e.g., Betancourt v Delta Airlines, Inc., 60 AD3d 609 [2d Dept 2009] [defendants waived late service of the complaint by accepting and retaining the complaint, without objection, and serving answer with demand for a bill of particulars and a demand for discovery and inspection]).

Notwithstanding the foregoing, this Court grants the defendants' motion. The City's delay in answering was reasonable, as the City needed to first determine whether it was required to represent officers Saintu and Cruz under GML §50-k before answering on their behalf (See Alexandre v Martinez, 161 AD3d 633 [1st Dept 2018]; see also Myers v City of New York, 110 AD3d 652 [1st Dept 2013]) and the City's Answer presents potentially meritorious defenses. Neither is there any prejudice to plaintiff in permitting the City to answer and defend this action on the merits.

Plaintiff's arguments in opposition are unavailing. The City's answer informs plaintiff that the Corporation Counsel is representing the NYPD Defendants and is properly verified by the electronic signature of Adam Lerman, Esq., a New York City Law Department attorney (See CPLR §3020[d][2]; Uniform Rule §202.5-b[e][iii]). Contrary to plaintiff's claim, no "perjury clause" is required in the verification (See CPLR §3020[a]; CPLR §2106[a]).

Accordingly, it is

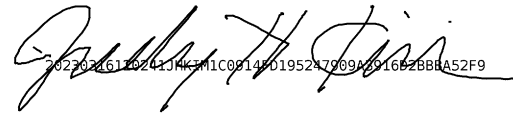
ORDERED that the motion by defendants the City of New York, the New York City Police Department, NYPD Sergeant Christopher N. Saintu, and NYPD Officer Kelvin I. Cruz to compel plaintiff to accept their answer dated October 21, 2022 is granted, and such answer is deemed timely filed and served, nunc pro tunc; and it is further

ORDERED that counsel for the City of New York shall serve a copy of this decision and 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); 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 “efiling” page on this court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that counsel for the City of New York shall serve a copy of this decision and order upon plaintiff, with notice of entry, within fifteen days of the date of this decision and order.

This constitutes the decision and order of the Court.



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3/16/2023

DATE

HON. JUDY H. KIM, 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