

**Appel v New York City Police Dept.**

2023 NY Slip Op 30785(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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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 80, 81, 82, 83, 84, 85, 86, 87, 137

were read on this motion for DEFAULT JUDGMENT.

Upon the foregoing documents, plaintiff's motion, pursuant to CPLR §3125, for a default judgment as to defendants Michotte Nabua, R.N., David Adesuyan, R.N., Sara Hadi, M.D., and Rachael Heyden, D.O. s/h/a Rachael Heyden, M.D. (the "Individual Defendants") and Mount Sinai Health System, Inc. ("Mount Sinai") is denied 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 July 27, 2022, the Individual Defendants interposed answers to the complaint, verified by counsel, Adam Dlugacz, Esq., an attorney at Heidell, Pittoni, Murphy & Bach, LLP (NYSCEF Doc. Nos. 7-10). On August

29, 2022, Mount Sinai interposed an answer responding to the first verified complaint (NYSCEF Doc. No. 17).

On August 16, 2022, plaintiff filed a supplemental summons and amended verified complaint, without leave of the Court. Service of the amended verified complaint was effected on Mount Sinai on September 1, 2022. On September 1, 2022, each of the Individual Defendants interposed answers to the amended verified complaint which were again verified by Mr. Dlugacz (NYSCEF Doc. No. 24-26). On September 23, 2022, Mount Sinai interposed an answer to plaintiff's amended verified complaint, which answer was verified by McCallion L. Campbell, Esq. (NYSCEF Doc. No. 47). Plaintiff rejected this answer on the grounds that it was untimely (NYSCEF Doc. No. 48). In that rejection, plaintiff also asserted that Ms. Campbell's verification was invalid, based on the fact that Mr. Dlugacz's office is in New York County, which would preclude verification by counsel as Mount Sinai is also located in New York County (Id.).

Plaintiff now moves for a default judgment on the grounds that Mount Sinai failed to timely answer the amended verified complaint and that, in any event, the verifications to the answers filed by the Individual Defendants or Mount Sinai are invalid because court records indicate that Mr. Dlugacz's office is in New York County rather than in White Plains.

In opposition, defendants submit, inter alia, an affirmation—denominated as an affidavit—from Mr. Dlugacz, attesting, in relevant part, that:

Since 2020, I have regularly maintained an office and practice law in the firm's White Plains Office. In March 2021, I gave up my office in NYC. As such, prior to the commencement of this instant action and at the time I verified the defendants' answers, I was regularly practicing law and maintaining an office at HPMB's White Plains Office

(NYSCEF Doc. No. 64 [Dlugacz Affirm. at ¶¶4-5]).

## DISCUSSION

To establish her entitlement to a default judgment, plaintiff must submit proof that the summons and complaint was properly served upon the defaulting defendants, proof of the defendants' default, and proof of the facts constituting the claim (CPLR §3215[f]; see Gordon Law Firm, P.C. v Premier DNA Corp., 165 NYS3d 691 [1st Dept 2022]). Plaintiff fails to establish defendants' default and therefore, is denied.

To the extent that Mount Sinai's time to answer the amended verified complaint expired on September 21, 2022, its interposition of an answer two days thereafter is excused by the Court as de minimis, particularly in light of the fact that the amended verified complaint was filed without leave of the Court (See CPLR §3025) as well as the policy of this State to resolve cases on the merits (See Bey v Sobro Local Dev. Corp., 177 AD3d 448, 449 [1st Dept 2019]). In addition, the Court finds that answers interposed by Mount Sinai and the Individual Defendants were properly verified. The defendants established, through Mr. Dlugacz's affidavit, that Mr. Dlugacz's practice is located in White Plains and was located there at the time of the verifications at issue. In addition, plaintiff's argument that these verifications needed to be notarized is incorrect (See CPLR §2106).

Accordingly, it is

**ORDERED** that plaintiff's motion for a default judgment is denied; and it is further

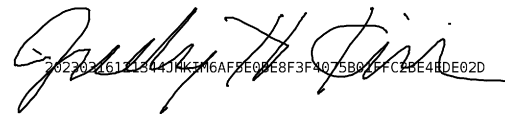
**ORDERED** that counsel for Mount Sinai Health System, Inc. shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

**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](http://www.nycourts.gov/supctmanh)); and it is further

**ORDERED** that counsel for Mount Sinai Health System, Inc. 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