

Grissom v City of New York

2023 NY Slip Op 30872(U)

March 22, 2023

Supreme Court, New York County

Docket Number: Index No. 153642/2022

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

-----X

CHARLES GREGORY GRISSOM,
Plaintiff,

INDEX NO. 153642/2022

MOTION DATE 03/08/2023

MOTION SEQ. NO. 001

- v -

THE CITY OF NEW YORK, NYPD POLICE OFFICER
STEVEN CRUZ, NYPD POLICE OFFICER PAUL
SCLAFANI, NYPD POLICE OFFICERS JOHN/JANE DOES

DECISION + ORDER ON
MOTION

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12,
13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24

were read on this motion for JUDGMENT - DEFAULT.

Upon the foregoing documents, plaintiff's motion for a default judgment as to New York
City Police Department ("NYPD") Officers Steven Cruz and Paul Sclafani is denied and
defendants' cross-motion to compel plaintiff to accept their late answer is granted.

Plaintiff commenced this action by filing a summons and verified complaint on April 28,
2022 (NYSCEF Doc. No. 1). Officers Cruz and Sclafani were served, pursuant to CPLR §308(2),
on May 11, 2022 (NYSCEF Doc. Nos. 3, 5). An affidavit of service attesting to service upon Cruz
was filed with the Court on May 19, 2022 while an affidavit of service attesting to service on
Sclafani was filed on December 19, 2022.

Defendant the City of New York (the "City") interposed a verified Answer on July 20,
2022 (NYSCEF Doc. No. 16). On February 6, 2023, the City filed an Amended Answer on behalf
of itself and Officers Cruz and Sclafani.

Plaintiff filed the instant motion on January 9, 2023. The City opposes the motion and cross-moves for an order compelling plaintiff to accept its February 6, 2023 Amended Answer.

DISCUSSION

That branch of plaintiff's motion for a default judgment as against the officers Cruz and Sclafani is denied. To establish his entitlement to a default judgment, plaintiff must submit proof of: "valid service of process, the facts constituting the causes of action, and the [defendants'] default" (First Fed. Sav. & Loan Assn. of Charleston v Tezzi, 164 AD3d 758, 759-60 [2nd Dept 2018] [internal citations omitted]).

Plaintiff has not established Sclafani's default. Where, as here, service was effected pursuant to CPLR §308(2), "proof of such service shall be filed with the clerk of the court ... within twenty days of ... delivery or mailing, whichever is effected later," and "service shall be complete ten days after such filing" (CPLR § 308[2]). In this case, the relevant affidavit of service was not filed within twenty days after service and, therefore, at the time this motion was made service had yet to be completed on Sclafani (First Fed. Sav. & Loan Assn. of Charleston v Tezzi, 164 AD3d 758, 759-60 [2d Dept 2018]). As Sclafani's his time to answer the complaint has not started to run he has not defaulted (Id.).

The Court also denies plaintiff's motion as to Cruz. Even assuming plaintiff has satisfied the requirements of CPLR §3215, the City's opposition offers both a reasonable excuse for its delay in interposing an Answer on Cruz's behalf as well as a potentially meritorious defense. Specifically, defendants have set forth a reasonable excuse for the delay due to its need to determine whether Corporation Counsel could represent Cruz and Sclafani pursuant to General Municipal Law §50-k(2) (Myers v City of New York, 110 AD3d 652 [1st Dept 2013] ["City's

delay in answering on behalf of the individual defendants was reasonable in that it was due to its investigation of its obligation to defend them”). The City has also established potential meritorious defenses, as reflected in its answer (See Alexandre v Martinez, 161 AD3d 633 [1st Dept 2018]). Accordingly, plaintiff’s motion is denied.

Finally, in light of the reasonable excuse and potentially meritorious defense proffered by the City as well as “the strong public policy of this state to dispose of cases on their merits” (HSBC USA v Lugo, 127 AD3d 502, 503 [1st Dept 2015] [internal citations omitted]), the Court grants defendants’ cross-motion to compel plaintiff to accept their late answer.

Accordingly, it is

ORDERED that plaintiff’s motion for a default judgment against Cruz and Sclafani is denied; and it is further

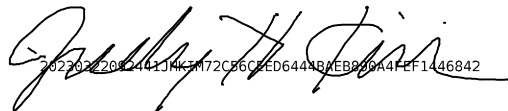
ORDERED that defendants’ cross-motion to compel plaintiff to accept its Amended Answer filed on February 6, 2023 (NYSCEF Doc. No. 16) is granted and its Amended Answer is deemed served and filed nunc pro tunc; and it is further

ORDERED that counsel for the City of New York 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); 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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3/22/2023

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