

**Hughes v City of New York**

2023 NY Slip Op 32890(U)

August 21, 2023

Supreme Court, New York County

Docket Number: Index No. 154234/2023

Judge: J. Machelle Sweeting

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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. J. MACHELLE SWEETING PART 62**

*Justice*

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MARY HUGHES AKA MARY HUGHES-CRISMAN,  
WILLIAM MALCOLM CRISMAN,

Plaintiffs,

INDEX NO. 154234/2023

MOTION DATE 07/12/2023

MOTION SEQ. NO. 001

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY  
DEPARTMENT OF PARKS AND RECREATION, BATTERY  
PARK CITY AUTHORITY A/K/A THE HUGH L. CAREY  
BATTERY PARK CITY AUTHORITY, THE BATTERY  
CONSERVANCY, INC. A/K/A THE BATTERY  
CONSERVANCY, BATTERY PARK CITY PARKS  
CONSERVANCY CORPORATION, NY CAROUSEL  
ENTERTAINMENT, LLC, THE TIFFANY AND CO.  
FOUNDATION

**DECISION + ORDER ON  
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16,  
17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 32, 33, 34, 35

were read on this motion to/for EXTEND - TIME.

In the underlying action, plaintiff MARY HUGHES A/K/A MARY HUGHES-CRISMAN alleges that on March 31, 2022, at approximately 9:00 a.m., she was caused to trip and fall over a defective, broken, raised, uneven, unleveled, pavestone/paving slab/pavement on a pedestrian walkway located behind/adjacent to the “SeaGlass Carousel” which is located at “The Battery,” formerly known as Battery Park in New York, New York.<sup>1</sup>

<sup>1</sup> Plaintiff WILLIAM MALCOLM CRISMAN is the spouse of MARY HUGHES, and argues that he has been deprived of the comfort, society, services and consortium of MARY HUGHES.

Pending before the court is a motion where defendants BATTERY PARK CITY AUTHORITY A/K/A THE HUGH L. CAREY BATTERY PARK CITY AUTHORITY and BATTERY PARK CITY PARKS CONSERVANCY CORPORATION (collectively, the “Battery Defendants”) seek an order, pursuant to Civil Practice Law and Rules (“CPLR”) 3012(d), extending by 30 days the amount of time for the Battery Defendants to answer, move, or otherwise respond to Plaintiffs’ Verified Complaint. Also pending under this motion sequence is a cross-motion filed by plaintiffs seeking a judgment on default against the Battery Defendants, and an assessment of damages by the court with a jury pursuant to CPLR 3215.

#### Arguments Made by the Parties

The Battery Defendants argue that they are “in need of additional time to confer with the client regarding the allegations in the Verified Complaint in order to prepare the appropriate responding papers.” They argue that they had sought plaintiffs’ consent to this extension of time, and that plaintiffs had unreasonably withheld such consent. The Battery Defendants also argue that the claims against them are meritless, and that long before this action was even commenced, they had provided to plaintiffs’ counsel evidence establishing that the location of the accident is not within the Battery Defendants’ boundaries.

Plaintiffs argue that the time for the Battery Defendants to answer, move, or otherwise appear in this action expired back on June 15, 2023, and that it has been more than one (1) year since the service of the Notice of Claim and more than six (6) months since plaintiffs’ 50-h examinations by defense counsel. With respect to the Battery Defendants’ request for an extension of time, plaintiffs argue that that the Battery Defendants had not contacted plaintiffs to seek their consent until after the deadline to Answer had passed, and the Battery Defendants were already in

default. Plaintiffs also cite statues and caselaw regarding the standard to vacate a default judgment, and argue that the Battery Defendants have not shown why a default against them should not be granted.

### Conclusions of Law

The court first notes that no default judgment has been issued against the Battery Defendants, thus, the law cited by plaintiffs on this topic does not apply here.

The Appellate Division, First Department has repeatedly held:

[t]hat it is the general policy of the courts to permit actions to be determined by a trial on the merits wherever possible and for that purpose a liberal policy is adopted with respect to opening default judgments in furtherance of justice to the end that the parties may have their day in court to litigate the issues . . .

38 Holding Corp. v. New York, 179 A.D.2d 486 (App. Div. 1<sup>st</sup> Dept. 1992); *See also* Gluck v. McDonough, 139 A.D.3d 628 (2016) (referencing that “strong public policy favors resolving cases on the merits”) and Acosta v. Riverdale Dev., LLC, 72 A.D.3d 525 (2010) (“Finally, vacatur here was consistent with the strong public policy favoring resolution of cases on their merits”).

Further, CPLR 3012 (Service of pleadings and demand for complaint), as cited by the Battery Defendants, allows the court to extend the time to appear or plead, upon such terms as may be just, upon a showing of reasonable excuse for delay. CPLR section 2004 (Extensions of time generally) authorizes the court to extend the time fixed by any statute, rule or order for doing any act, upon such terms as may be just and upon good cause shown. Additionally, section 2005 (Excusable delay or default) authorizes the court to exercise its discretion, in the interests of justice, to excuse delay or default.

Here, plaintiffs do not dispute that the Battery Defendants took both plaintiffs’ 50-h examinations; discussed the merits of the case with plaintiff’s counsel, including sending counsel a copy of the deed describing the geographical boundaries of the Battery Park City Authority; and communicated with plaintiffs’ counsel regarding an extension of time to file an Answer. Further, other than arguing that the Battery Defendants failed to file an untimely answer, plaintiffs have not articulated how they would be prejudiced if an extension of time were granted to the Battery Defendants, as this action was only filed three months ago, on May 9, 2023.

Given the above, the court declines to issue a default judgment against the Battery Defendants, and grants such defendants an extension of time to file an Answer.


Conclusion

Pursuant to the above, it is hereby:

**ORDERED** that the motion by the Battery Defendants for a 30-day extension of time in which to file an Answer is **GRANTED**; and it is further

**ORDERED** that the Battery Defendants must file their Answer within 30 days of the date of this order; and it is further

**ORDERED** that plaintiff’s cross-motion seeking a default judgment against the Battery Defendants is **DENIED**.

<p><u>8/21/2023</u> DATE</p>					<p> _____ J. MACHELLE SWEETING, J.S.C.</p>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	REFERENCE
				<input type="checkbox"/>	FIDUCIARY APPOINTMENT

154234/2023 HUGHES AKA MARY HUGHES-CRISMAN, MARY ET AL vs. THE CITY OF NEW YORK ET AL  
Motion No. 001

Page 4 of 4