

P.P. v City of New York
2023 NY Slip Op 33944(U)
November 2, 2023
Supreme Court, Kings County
Docket Number: Index No. 523889/2019
Judge: Sabrina B. Kraus
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SUPREME COURT OF THE STATE OF NEW YORK KINGS COUNTY

PRESENT: <u>HON. SABRINA B. KRAUS</u> <i>Justice</i> -----X P.P., Plaintiff,	PART 57 INDEX NO. <u>523889/2019</u> MOTION DATE <u>N/A</u> MOTION SEQ. NO. <u>001, 003, 004</u>
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CITY OF NEW YORK AND THE NEW YORK CITY
DEPARTMENT OF EDUCATION

Defendants.

DECISION + ORDER ON MOTION

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 18 - 23
were read on this motion to/for LEAVE TO FILE

The following e-filed documents, listed by NYSCEF document number (Motion 003) 38 - 52
were read on this motion to/for DEFAULT

The following e-filed documents, listed by NYSCEF document number (Motion 004) 53 - 66
were read on this motion to/for EXTEND TIME

BACKGROUND

Plaintiff commenced this action under the Child Victims Act ("CVA") seeking damages for alleged assault and battery, sexual abuse, and rape. Plaintiff alleges that while a student at Whitelaw Reid Junior High School in, Brooklyn, New York she was preyed upon by her band teacher, George Hampson.

PENDING MOTIONS

On April 5, 2021, Plaintiff moved for an order pursuant to CPLR §§2001 and 2004 to deem the filing of Proof of Service/ Acknowledgment of Service upon the Defendants CITY OF NEW YORK and the NEW YORK CITY DEPARTMENT OF EDUCATION *nunc pro tunc* to the date of service of the Summons and Verified Complaint (Motion Seq No 1). This motion is granted without opposition.

On August 23, 2021, Plaintiff moved for a default judgment against defendants. This motion is denied (Motion Seq. No. 3).

On October 27, 2021, Defendants cross-moved for an order granting an extension of time to appear, and compelling plaintiff to accept late service of defendant's answer *nunc pro tunc*. This motion is granted.

DISCUSSION

Where there is no demonstrable prejudice resulting from the delay in interposing an answer, "the policy of the courts [is] to permit actions to be determined on their merits. " *Scott v. Allstate Ins. Co.*, 124 A.D.2d 481 (1st Dept. 1986); *see also Silverio v. City of New York* 266 A. D. 2d 129 (1st Dept. 1999). This follows New York's strong public policy favoring litigation and resolution of matters on their merits. *Id.*

CPLR §3012(d) governs the extension of time for a party to plead or appear and provides:

Upon the application of a party, the court may extend the time to appear or plead, or compel the acceptance of a pleading untimely served, upon such terms as may be just and upon a showing of reasonable excuse for delay or default

Where a delay is brief and caused no prejudice to plaintiff, the court will exercise its broad discretion to compel plaintiff to accept a late answer pursuant to CPLR §3012(d). *Hoffman v. 461 Arlington on Props.*, 146 N.Y.S. 2d 790 (2d Dept. 2021).

The Court finds the City has a reasonable excuse for filing the answer late. Plaintiff's counsel was aware of the City's intention to answer this complaint through the various telephone contacts. Plaintiff's counsel knew the City was not deliberately delaying in answering the complaint, but was instead in a backlog situation created by an unprecedented volume of Child Victim Act cases being filed, and a system shut down due to a security breach of the Law Departments files.

In fact, to the extent there has been delay in this action it was occasioned by plaintiffs attorney's refusal to withdraw the default motion and accept the answer that was filed on August 27, 2021.

There is nothing in this record that warrants the drastic remedy of entry of a default judgment. The City and the Department of Education assert a meritorious defense to this action. The City alleges that there is no proof that the City was on notice that plaintiff's abuser was a known child molester.

WHEREFORE it is hereby:

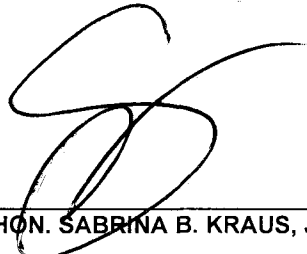
ORDERED that the court will deem the filing of Proof of Service/ Acknowledgment of Service upon the Defendants CITY OF NEW YORK and the NEW YORK CITY DEPARTMENT OF EDUCATION *nunc pro tunc* to the date of service of the Summons and Verified Complaint; and it is further

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

ORDERED that defendants' cross-motion for and extension of time to answer and compelling plaintiff to accept late service of defendant's answer *nunc pro tunc* is granted; and it is further

ORDERED that counsel appear for a virtual compliance conference on January 29, 2024,
at 11:00 AM.

This constitutes the decision and order of the court.

<u>11/2/2023</u>			
DATE		HON. SABRINA B. KRAUS, 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