

**Holy Spirit Assn. for the Unification of World
Christianity v Crawford**

2024 NY Slip Op 30686(U)

March 5, 2024

Supreme Court, New York County

Docket Number: Index No. 159626/2020

Judge: Paul A. Goetz

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PAUL A. GOETZ PART 47

Justice

-----X

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF
WORLD CHRISTIANITY,

Plaintiff,

- v -

ANNICE CRAWFORD, JACOB CRAWFORD

Defendants.

-----X

INDEX NO. 159626/2020

MOTION DATE 07/27/2023,
11/10/2023

MOTION SEQ. NO. 002 003

DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 36, 37, 38, 52,
53, 54

were read on this motion to/for JUDGMENT - DEFAULT

The following e-filed documents, listed by NYSCEF document number (Motion 003) 43, 44, 45, 46, 47,
49, 50

were read on this motion to/for LEAVE TO FILE

In this private nuisance action against a mother and son living in a building owned by
plaintiff, plaintiff seeks a default judgment against defendants based on their failure to file an
answer to its complaint, while defendants move to file a late answer.¹

BACKGROUND

Plaintiff's complaint, dated November 4, 2020, asserts causes of action for: (1) a
declaratory judgment that defendant Jacob Crawford (Jacob)'s conduct is creating a nuisance; (2)
an injunction barring defendant Jacob from engaging in any further inappropriate, abusive, or
offensive conduct; and (3) an injunction barring defendant from interfering with plaintiff's rights

¹ By order dated January 12, 2024, the motion for default judgment (MS #2) was re-calendared to be decided in
conjunction with the motion for leave to file a late answer (MS #3) (NYSCEF Doc No 52).

and obligations to the employees and other occupants of the building (NYSCEF Doc No 1).

Charles J. LoCascio, who attempted to serve the summons and complaint—as well as an order to show cause for a preliminary injunction (NYSCEF Doc No 2)—on defendants on November 16, 2020, stated in his affidavit of service:

“I knocked at said unit door and it was answered by [Annice Crawford]. In [sic] informed her that I had a notice from the building owners for her and Jacob Crawford, and reached to hand her the papers. At this point Ms. Crawford quickly shut and locked the door and did not respond further. I called to Ms. Crawford through the door several times to entreat her to open and accept the papers, but she never responded to me. [] At this point I informed Ms. Crawford through the door that I would be leaving the papers for both her and Jacob Crawford in a Redweld folder outside the unit door, and I urged her to take the papers in then or shortly after I left in order to protect her privacy. I received no response, so I left the papers in the folder leaning against the base of the unit door . . . That same day [] I mailed [] copies of said Summons and Complaint by Regular First Class Mail to [defendants]”

NYSCEF Doc Nos 19, 20, 21. Defendants never filed an answer to the complaint, nor did they oppose plaintiff’s order to show cause for a preliminary injunction. By decision and order dated February 17, 2021 plaintiff’s motion for a preliminary injunction was granted (NYSCEF Doc No 23).

After defendants failed to appear for two status conferences (NYSCEF Doc Nos 33, 34), plaintiff filed a motion on July 27, 2023 seeking a default judgment against defendants based on defendants’ failure to file and answer (NSYCEF Doc No 36). The motion was served on defendants by mail that same day (NYSCEF Doc No 38). According to defendant Annice Crawford (Annice), she received these papers on August 8, 2023, which was the first she learned that an action had been initiated (NYSCEF Doc No 49). Later that day, she retained Charles H. Small Esq., who filed a notice of appearance on behalf of defendants (NYSCEF Doc No 39). He promptly contacted plaintiff’s counsel to request an adjournment of plaintiff’s motion for a

default judgment, but states that he never received a response (NYSCEF Doc Nos 44, 47). Defendants did not file opposing papers. Subsequently, on November 10, 2023, defendants filed a motion for leave to file an answer to the complaint (NYSCEF Doc No 44). Plaintiff opposes on the basis that defendants offer no explanation as to why they waited three years after the action was commenced to seek to file an answer, and notes that defendants filed no opposition to plaintiff's motion for a default judgment, though they had ample time to do so. In reply, defendant Annice claims that she and defendant Jacob had not filed an answer because they were not apprised of the lawsuit against them until August 8, 2023 (NYSCEF Doc No 49).

DISCUSSION

Leave to File an Answer

“CPLR 3012(d) provides that a court has the discretionary power to extend the time to plead, or to compel acceptance of an untimely pleading ‘upon such terms as may be just,’ provided that there is a showing of a reasonable excuse for the delay” (*U.S. Bank N.A. v Barker Project LLC*, 220 AD3d 588, 588 [1st Dept 2023]).

Even accepting defendants' claim that they only learned of the complaint filed against them on August 8, 2023, they did not move for leave to file a late answer until November 10, 2023. In light of the rule that “[s]ervice of an answer or reply [must] be made within twenty days after service of the pleading to which it responds” (CPLR § 2012[a]), this three-month delay is considerable, especially in light of defendants' failure to offer an explanation. Defendants' counsel's affirmation explains only that he was retained on August 8, 2023, and references communications he had with plaintiff's counsel regarding its separate motion for a default judgment (NYSCEF Doc No 44) (*U.S. Bank N.A. v Barker Project LLC*, 220 AD3d 588 [1st Dept 2023] [communication between attorneys fails to demonstrate good cause or reasonable

excuse for delay in answering]). Defendant Annice’s reply affidavit also falls short, stating only that she was unaware of this case until August 8, 2023 (NYSCEF Doc No 49). Since there is no apparent excuse for the delay in seeking to file a late answer after defendants were apprised of the lawsuit, their motion will be denied (2001 Real Estate Space Catalyst, Inc. v Stone Land Capital, Inc., 194 AD3d 535 [1st Dept 2021] [approving trial court’s denial of a motion for leave to file an answer which was filed 35 days after defendants were served with a notice of entry of a default judgment and defendants “failed to provide a reasonable excuse for the delay”]).

Default Judgment

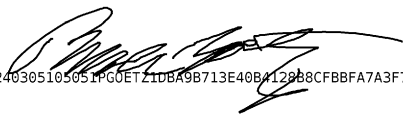
Plaintiff moves for a default judgment based on defendants’ failure to answer the complaint. Defendants acknowledged that they were aware that this motion had been filed (NYSCEF Doc Nos 44, 47, 49), and yet they did not oppose, nevertheless, defendants will be afforded an opportunity to file late opposition to the motion.

CONCLUSION

Accordingly, it is

ORDERED that defendants’ motion for leave to file a late answer (MS #3) is denied, and it is further

ORDERED that defendants are permitted to file opposition to plaintiff’s motion for a default judgment (MS #2) by March 19, 2024; plaintiff is permitted to file a reply by March 28, 2024; and the motion is adjourned to March 29, 2024 for submission only.


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<u>3/5/2024</u> DATE					<u>PAUL A. GOETZ, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE