

Senderoff v Manchanda

2024 NY Slip Op 32733(U)

July 29, 2024

Supreme Court, New York County

Docket Number: Index No. 152538/2019

Judge: Dakota D. Ramseur

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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. DAKOTA D. RAMSEUR PART 34M

Justice

-----X
DOUGLAS SENDEROFF INDEX NO. 152538/2019
Plaintiff, MOTION DATE 08/08/2022
MOTION SEQ. NO. 006

- v -

RAHUL MANCHANDA,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 006) 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183

were read on this motion to/for

JUDGMENT - DEFAULT

In March 2019, plaintiff Douglas Senderoff MD commenced this action against defendant Rahul Manchanda, Esq., seeking damages for defamation. Plaintiff now moves pursuant to CPLR 3025 (d) and 3215 (a) for a default judgment against defendant for failing to answer his amended complaint with the time allotted by the CPLR. Defendant cross-moves pursuant to CPLR 3215 (c) to dismiss the complaint. The motions are opposed. For the following reasons, plaintiff's motion is granted, and defendant's cross-motion is denied.

FACTUAL BACKGROUND

Plaintiff commenced this action by filing the summons and verified complaint on March 8, 2019, seeking damages and injunctive relief arising from the alleged defamatory statements made by defendant. From 2018 through 2020, defendant allegedly authored defamatory and false statements concerning plaintiff on various "shaming" websites and republished said statements in publicly filed documents in what plaintiff considers sham court proceedings. The defamatory statements include: that plaintiff is under "current and active federal/state criminal investigation;" is "looking at massive prison time/loss of medical license," and was visited by the DEA because of defendant's "tip" claiming that plaintiff "traded drugs for sexual favors," (NYSCEF doc. no. 161 at ¶¶ 4-7, plaintiff aff. of merit.)

In December 2019, in motion sequence 003, defendant moved for partial summary dismissal of the complaint while plaintiff cross-moved for leave to file an amended complaint in October 2020. By Decision and Order dated April 29, 2021 (NYSCEF doc. no. 112), the Court denied defendant's motion for partial summary judgment and granted plaintiff's motion to file an amended complaint (hereinafter, the "April 2021 Order"). For relevant purposes here, the April 2021 Order stated that "it is further ORDERED that the amended complaint, in the form annexed to the motion papers, shall be deemed served upon service of a copy of this order with notice of

entry upon defendant.” Plaintiff served a copy of the April 29, 2021 Order with notice of entry upon defendant’s counsel via NYSCEF on the same day. Defendant did not answer the amended complaint or otherwise move within the time required by the CPLR.

On March 17, 2020 (before the Court granted the motion for leave to file an amended complaint), plaintiff moved to strike defendant’s first answer, or, in the alternative to compel discovery, over defendant’s alleged noncompliance with discovery obligations (motion sequence no. 004). By Decision and Order dated March 1, 2021 (NYSCEF doc. no. 99), the Court granted plaintiff’s motion to strike and/or to compel, to the extent that defendant was ordered to comply with discovery by a date certain.

On May 19, 2021, defendant’s counsel moved by Order to Show Cause to withdraw on May 21, 2021. The Court signed the OSC on May 24, 2021, and granted counsel’s request to be relieved on June 11, 2021 (motion sequence 005, the “June 2021 OSC”). In doing so, the court directed defendant to appoint substitute counsel or proceed *pro se* within 30 days and ordered “that no further proceedings may be taken against the defendant without leave of this court for a period of 40 days after service on the former client of the aforesaid notice to appoint a substitute attorney.” (NYSCEF doc. no. 143, NYSCEF doc. no. 144.)

On July 6, 2021, before the 30-day deadline to appoint substitute counsel expired, defendant, now *pro se*, filed a notice of removal of this action to the United States District Court for the Southern District of New York. By Order dated July 28, 2021, Judge Alison J. Nathan held that defendant failed to strictly comply with 28 U.S.C § 1446 (a) and that his notice of removal was untimely. (NYSCEF doc. no. 149, Federal Court Order.) Consequently, she remanded this action back to this Court pursuant to 28 U.S.C. § 1447(c).

DISCUSSION

Cross-Motion for Dismissal

Defendant contends that the Court must dismiss the action under CPLR 3215 (c) based upon plaintiff’s failure to timely move for a default judgment within a year. The Court finds this argument unpersuasive. CPLR 3215 (c) provides that “if the plaintiff fails to take proceedings for the entry of judgment within one year after a default, the court shall not enter judgment but shall dismiss the complaint as abandoned, without costs, upon its own initiative or on motion unless sufficient cause is shown why the complaint should not be dismissed.” Here, while plaintiff acknowledges he filed the motion on June 2, 2022—or a year and one month after serving the Amended Complaint on April 29, 2021—the action was stayed for 40 days pursuant to this Court’s June 2021 OSC granting defendant’s counsel’s motion to withdraw and another 21 days due to defendant’s notice of removal. As such, since plaintiff’s time to move for a default judgment was tolled approximately two months, his motion is still timely.

Plaintiff’s Motion for Default Judgment

“In order to successfully oppose a [motion for a] default judgment, a defendant must demonstrate a justifiable excuse for his default and a meritorious defense.” (*New Media Holding*

Co. LLC v Kagalovsky, 97 AD3d 463, 465 [1st Dept 2012].) The determination as to whether the opposing party has established a reasonable excuse rests within the sound discretion of the motion court. (*Kasumov v City of New York*, 78 AD3d 560, 560 [1st Dept 2010].) Relevant factors include the extent of delay, whether there has been prejudice to the opposing party, whether the default was willful, and the strong public policy favoring resolving cases on the merits. (*Kagalovsky*, 97 AD3d at 465.) Here, plaintiff demonstrates service of the amended complaint upon defendant and that defendant failed to answer the compliant or otherwise move. Plaintiff has also established the merits of his claim by submitting plaintiff's affidavit of merit describing the nature of his claims against defendant.

In opposition, to establish a reasonable excuse, defendant cites his previous counsel's failure to answer the amended complaint or otherwise advise him of the need to file an answer. In defendant's words, this "was because his relationship with his attorney had deteriorated...due to [counsel's] excessive drinking, failure to communicate, failure to meet deadlines..." (NYSCEF doc. no. 179 at 4, def. memo in opp.) As such, "[defendant] was not aware that a response to the Amended complaint was required." (NYSCEF doc. no. 165 at ¶ 12, Manchanda affidavit.) While law office failure may constitute a reasonable excuse, "claims of law office failure which are 'conclusory and unsubstantiated' cannot excuse default." (*Galaxy Gen Contr. Corp. v 2201 7th Ave Realty LLC*, 95 AD3d 789, 789 [1st Dept 2012].) Mere neglect or bare allegations of incompetence on the part of prior counsel are insufficient to establish a reasonable excuse. (*Ferraro Foods Inc., v Guyon Inc.*, 165 AD3d 628, 630-631 [2d Dept 2018] [finding that corporate defendants' unsupported affidavit that prior retained counsel had not informed him of the need to answer the complaint was "a bare allegation" "insufficient to establish a reasonable excuse"].) Furthermore, a law office's failure should be rejected as a reasonable excuse where the conduct is part of a pattern of "persistent and willful inaction," "dilatatory behavior," or "willful default and neglect." (*Imovegreen, LLC v Frantic, LLC*, 139 AD3d 539, 540 [1st Dept 2016].)

Defendant's position that his previous counsel was solely responsible for his default strains credulity. Plaintiff has demonstrated that defendant, a New York licensed attorney, regularly intervened in his case and filed documents using his own attorney credentials.¹ For example, defendant—on his own behalf—twice moved to dismiss under CPLR 3211 (NYSCEF doc. nos. 2 and 28), filed two appeals with the First Department (NYSCEF doc. nos. 122 and 133), removed the case to federal court, then appealed the remand to the Second Circuit (NYSCEF doc no. 147 and 151) and even filed an appeal with the Supreme Court (NYSCEF doc. no. 166). With respect his first appeal to the First Department, on April 30, 2021, defendant expressed dissatisfaction with the Court's April 2021 Decision to grant plaintiff leave to amend his complaint and demanded that his former attorney appeal the decision (NYSCEF doc. no. 178. at 9-11, emails to First Department Attorney Grievance Committee). In these emails, his former attorney responded, "[t]here is no way we can prevail on appeal... we will not be appealing the decision." (*Id.* at 4.) Days later defendant filed the appeal himself. (NYSCEF doc. no. 122, notice

¹ Southern District Court Judge Alison Nathan, in her order remanding this case, wrote that "defendant is not a stranger to this Court. Because defendant filed three actions in this court that were dismissed *sua sponte*, by order dated April 16, 2015, the Honorable Vernon S. Broderick of this court warned [defendant, as "plaintiff-appellant"] that the continued filing of meritless lawsuits will result in an order under 28 USC § 1651, barring Plaintiff from filing any new action in this Court without prior permission."

of appeal.) The emails also make clear that defendant was aware of the need to file an amended answer: he directed his counsel to “[a]ppeal, amend our answer to include counterclaims (trespass, malicious prosecution, RICO . . . or cross-claim for full summary judgment” (NYSCEF doc. no. 178 at 9.) In light of defendant’s active participation in litigating this case, including overriding decisions of former counsel, it is simply not credible that defendant was unaware of the need to answer the amended complaint after the stay lifted. Accordingly, defendant’s conclusory and uncorroborated claim of law office failure cannot amount to a reasonable excuse (*Matter of Castellotti v Castellotti*, 165 AD3d 926, 928 [2d Dept 2018].)

Accordingly, it is hereby

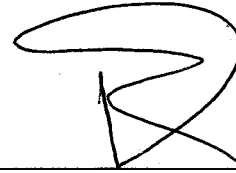
ORDERED that plaintiff Douglas Senderoff’s motion pursuant to CPLR 3215 for a default judgment against defendant is granted, as to liability only, and that an inquest shall be held to determine damages; and it is further

ORDERED that defendant’s cross motion for dismissal pursuant to CPLR 3215 (c) is denied; and it is

ORDERED that plaintiff shall file a note of issue by August 15, 2024; and it is further

ORDERED that plaintiff shall serve a copy of this order upon defendant, with notice of entry, within ten (10) days of entry.

This constitutes the decision and order of the Court.



DAKOTA D. RAMSEUR, J.S.C.

7/29/2024
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: