Rybsztajn v Elite Care LLC

2025 NY Slip Op 34176(U)

October 9, 2025

Supreme Court, Kings County

Docket Number: Index No. 529182/2022

Judge: Ingrid Joseph

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At an IAS Part 83 of the Supreme Court of the State of New York held in and for the County of Kings at 360 Adams Street, Brooklyn, New York, on the 9th day of October 2025.

PRESENT: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No: 529182/2022

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Bronia Rybsztajn, Deceased, by the Administratrix of the Estate, Jennifer Rybstein, and on behalf of decedent's distributees,

DECISION & ORDER

Mot. Seq. No. 6/7

Plaintiffs,

-against-

Elite Care LLC, Monica Dennie a/k/a Claudia Britton Morris, Monica Rock, Monica Britton, Claudia Dennie, and Britton Dennie, and John and Jane Does # 1-10, each an employee of Elite Care LLC,

Defendants.

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The following e-filed papers read herein:	NYSCEF Doc. Nos.:
Motion Seq. No. 6	
Notice of Motion/Affirmation in Support/Exhibits Annexed.....	91 – 98
Affirmation in Opposition.....	102
Affirmation in Further Support of Motion.....	103
Motion Seq. No. 7	
Notice of Cross Motion.....	99
Affirmation in Support of Cross-Motion.....	100
Affirmation in Opposition to Cross Motion.....	103

On October 7, 2022, Plaintiff Jennifer Rybstein (the "Plaintiff"), acting as the Administratrix of the Estate of Bronia Rybsztajn (the "Plaintiff-Decedent"), brought a wrongful death action against Defendant Elite Care LLC (the "Defendant"). On December 13, 2023, Plaintiff brought a motion (Mot. Seq. No. 5), inter alia, to amend her original complaint to correct objections raised by the Defendant (*see* NYSCEF Doc. No. 71).[1] Among her requests to the Court, the Plaintiff asked to add "Monica Dennie a/k/a Claudia Britton Morris, Monica Rock, Monica Britton, Claudia Dennie, and Britton Dennie ("Ms. Dennie") to the amended caption as a defendant. The Plaintiff did not, however, ask to include any other defendants in the amended caption or complaint. On January 21, 2025, the Court granted the Plaintiff leave to amend her complaint

[1] The other content of these objections that is not specifically mentioned does not affect the decision of the current motion and is therefore not discussed.

and add Ms. Dennie as a defendant (the "Decision") (*see* NYSCEF Doc. No. 88). Notably, the Court denied the rest of the motion and granted no other change to the original complaint (*id.*). In the Plaintiff's amended complaint, however, filed on February 22, 2025, the Plaintiff included "John and Jane Does # 1-10, each an employees [sic] of Elite Care LLC" (the "DOEs") to the caption (*see* NYSCEF Doc. No. 89). Furthermore, when referring to the Defendant throughout the amended complaint, Plaintiff referred to them as "Defendants Elite Care LLC and Eli Kohn," suggesting Mr. Kohn, the owner of Elite Care LLC, was a defendant (*id.*). On March 19, 2025, having received the amended complaint, the Defendant requested an extension date of May 5, 2025 to file their answer, which the Plaintiff granted (*see* NYSCEF Doc. Nos. 100, 102). Upon the arrival of May 5, 2025, the Defendant's counsel had a telephone conversation with the Plaintiff's counsel, requesting a further extension. Defendant's counsel claimed that the Defendant wanted to resolve the matter and would have a third-party reach out to the Plaintiff to begin mediation (the "Conversation");[2] this request was granted by the Plaintiff's counsel (*see* NYSCEF Doc. No. 102). On May 22, 2025, the Plaintiff's counsel sent an email to opposing counsel, informing him that no third-party had reached out to the Plaintiff and that he would be preparing a motion for default judgment to be filed on May 27, 2025 (*see* NYSCEF Doc. No. 98). The next day, the attorneys had another phone call in which the Defendant's counsel continued potential settlement discussions, offering to "shake hands and walk away" (*see* NYSCEF Doc. No. 102). The Plaintiff's counsel allegedly agreed to provide a response to the offer by May 27, 2025 (*see* NYSCEF Doc. No. 100). Additionally, the Defendant's counsel informed Plaintiff's counsel that they had violated the Decision by adding the DOEs and mentioning Mr. Kohn when referring to the Defendant. Thereafter, counsel advised opposing counsel that any motion for default judgment would be met with a cross-motion to dismiss the flawed pleading (*id.*). On May 27, 2025, having allegedly not responded to the Defendant's offer, the Plaintiff moved for default judgment (Mot. Seq. No. 6) (*see* NYSCEF Doc. No. 91). In response, on June 11, 2025, the Defendant filed a cross-motion to dismiss the amended complaint in its entirety for violating the directives by the Court; strike the irrelevant sections of the amended complaint which had been pleaded in violation of the Court's Decision;[3] and impose monetary sanctions on the Plaintiff (Mot. Seq. No. 7) (*see* NYSCEF Doc. Nos. 99-100). The Plaintiff now opposes this cross-motion.

In their affirmation in support of Mot. Seq. No. 6, the Plaintiff lays out the timeline of events (see above) (*see* NYSCEF Doc. No. 92). At the end of her affirmation, the Plaintiff requests that the Court issue an order, pursuant to CPLR 3215, granting default judgment for the Defendant's failure to file an answer and to set the matter down for an inquest and assessment of damages against the Defendant (*id.*).

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[2] The third-party mentioned is a member of the community whose identity is unknown.
[3] While the Defendant makes this contention, they give no evidence or examples of what irrelevant sections of the amended complaint have already been pleaded and are in violation of the Court's Decision.

In their opposition, the Defendant claims that the Plaintiff is not entitled to default judgment against them because the Plaintiff did not provide proof beyond its "barebones allegations," failing to adequately state a cause of action, which is required for default judgment to be granted (*see* NYSCEF Doc. No. 100). Additionally, the Defendant claims they did not file an answer since they were under the impression that a third-party was in contact with the Plaintiff and therefore, the motion for default judgment fails as the Defendant has given a reasonable excuse for their failure to answer (*id.*).

In the Defendant's affirmation in support of their cross-motion (Mot. Seq. No. 7), the Defendant argues for dismissal of the amended complaint in its entirety since the Plaintiff's amended complaint is filled with allegations specifically rejected by the Court in their Decision (*id.*).[3] Additionally, the Defendant claims that the Plaintiff includes rejected paragraphs that violate the Court's Decision and are therefore subject to dismissal pursuant to either CPLR §§ 3211 (a) (2), (5), and (7) or CPLR 3024 (b) (*id.*).[3] Finally, the Defendant argues that the impermissibility of the amended complaint subsequently followed by the motion for default judgment warrant sanctions for the Plaintiff's frivolous misconduct pursuant to 22 NYCRR 130-1.1 and the award of costs associated with the instant motion to the Defendant (*id.*).

In the Plaintiff's opposition to the cross-motion, Plaintiff's counsel addresses his mistake in failing to remove the Does from the caption, claiming, in good faith, that he overlooked it (*see* NYSCEF Doc. No. 103). The Plaintiff claims to have made the same mistake in paragraphs one and two by failing to change "Defendants" to "Defendant" when writing "Defendants Elite Care LLC and Eli Kohn" (*id.*). The Plaintiff, however, claims these are simple scrivener's errors that are meant to be covered by CPLR 2102 (f)[4] and that she may change them since the Defendant's counsel did not object within the 15-day window (*id.*). Next, the Plaintiff claims that her motion for default judgment is warranted, claiming that, per their second phone call, the Defendant's offer to shake hands and walk away was denied on the spot, and therefore, the Defendant knew that the offer had been denied and an answer would need to be filed by May 27, 2025 (*id.*). The Plaintiff then claims that, aside from the aforementioned scrivener's errors, the amended complaint, along with the Court's Decision and counsel's argument claiming the amended complaint is filled with rejected allegations, are simply the allegations on which this action arises (*id.*). The Plaintiff claims the cross-motion has no substance or basis in fact or law and the Court should deny the cross-motion and award

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[4] The Court notes that this is likely a typo since CPLR 2102 (f) does not exist. The Court believes the Plaintiff meant to cite CPLR 2101 (f) which reads:

> Defects in form; waiver. A defect in the form of a paper, if a substantial right of a party is not prejudiced, shall be disregarded by the court, and leave to correct shall be freely given. The party on whom a paper is served shall be deemed to have waived objection to any defect in form unless, within fifteen days after the receipt thereof, the party on whom the paper is served returns the paper to the party serving it with a statement of particular objections.

(CPLR 2101 [f])

attorney's fees (*id.*). Furthermore, upon oral arguments, held on July 15, 2025, the Plaintiff's counsel has asked the Court to allow him to further amend the complaint to fix these good faith errors.

The Court first addresses Mot. Seq. No. 6. A plaintiff may seek default judgment, pursuant to CPLR 3215, "when a defendant has failed to appear, plead or proceed to trial" (CPLR 3214 [a]). In order to meet their prima facie burden for default judgment, the plaintiff must submit proof of (1) service of the summons and complaint, (2) the facts constituting the claim, and (3) the defaulting defendant's failure to answer or appear (CPLR 3215 [f]; *see generally Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d 898, 899 [2d Dept 2019]).

Based on the Court's Decision for Mot. Seq. No. 5 and the timeline for extension to file an answer, attested to by both parties, it is clear that the Defendant did not submit an answer by the stipulated date (*see* NYSCEF Doc. Nos. 88, 92, and 100). Therefore, pursuant to CPLR 3215 (a), the Plaintiff may bring a motion for default judgment. Upon review of the Plaintiff's motion papers, the Court finds the Plaintiff has met her prima facie burden for default judgment since she has provided proof of (1) service of summons and complaint (*see* NYSCEF Doc. No. 2), (2) the facts constituting the claim (*see* NYSCEF Do. Nos. 1 and 93), and (3) defaulting defendant's failure to answer or appear (*see* NYSCEF Doc. No. 92). Therefore, the burden to overcome the Plaintiff's successful prima facie motion for default judgment is transferred to the Defendant.

When a plaintiff meets their prima facie burden for default judgment, the burden then shifts to the defendant to show "a reasonable excuse for [their] delay and a potentially meritorious defense" (*see generally Deutsche Bank Natl. Trust Co. v Cumbe*, 217 AD3d 832, 834 [2d Dept 2023]). The Court has the sound discretion when determining what a "reasonable excuse" is (*see generally Arnav Indus. Inc. Profit Sharing Plan & Trust v 3449-3461 Hamilton Ft, LLC*, 237 AD3d 786, 789 [2d Dept 2025]).

The Defendant claims it has a reasonable excuse for the delay, arguing that it was waiting for the Plaintiff's response to its most recent offer wherein the Defendant filed its motion for default judgment. Based on the history of this case, the Court notes that the reason for default on behalf of the Defendant is not due to a failure to appear or communicate with the Plaintiff. In fact, oral arguments made on July 15, 2025, show that the Defendant continues to be very invested in resolving this case and that the default was due to a misunderstanding on behalf of the Defendant. It is well established that, when there is a potentially meritorious defense, public policy favors the resolution of cases on their merits, not on procedural errors (*see Arteaga v Adom Rental Transp., Inc.*, 121 AD3d 931, 932 [2d Dept 2014]). In the current motion, the Defendant has shown a potentially meritorious defense, claiming the amended complaint is full of allegations that were specifically rejected by the Court in their Decision (see NYSCEF Doc. No. 100). Additionally, in regard to the action as a whole, the Defendant has provided a potentially meritorious defense, claiming they had no duty to the Plaintiff-Decedent nor did they cause the alleged injuries at the

heart of this case (*id.*). The court in its discretion and in the interest of public policy, rules in favor of resolving the instant action on the merits of the case. Therefore, the Court finds that the Defendant's excuse for its delay is reasonable. Since, the Defendant has met their burden to overcome the Plaintiff's prima facie showing of default judgment, the Plaintiff's motion for default judgment is denied. Finally, since the Plaintiff's request to set the matter down for an inquest and assessment of damages against the Defendant is contingent on the granting of her motion for default judgment, the denial of default judgment leaves this subsequent request moot.

The court will next address, the Defendant's cross-motion (Mot. Seq. No. 7), wherein the Defendant's first request for relief is a dismissal of the amended complaint, pursuant to CPLR §§ 3211 (a) (2), (5), and (7) or CPLR 3024 (b), for violating the directives of the Court's Decision (*see* NYSCEF Doc. No. 100). Aside from generally mentioning that the amended complaint contains "scores of rejected paragraphs" that violate the Court's Decision, the Defendant provides no specific evidence to (1) establish a lack of jurisdiction by the Court (CPLR 3211 [a] [2]), (2) succeed on a theory, pursuant to CPLR 3211 (a) (5),[5] or (3) succeed on a theory, pursuant to CPLR 3211 (a) (7).[6] Therefore, the court denies the Defendant's motion to dismiss under the aforementioned theories. With respect to its theory for dismissal, pursuant to CPLR 3024 (b), the Court finds that the Defendant has met its burden. CPLR 3024 (b) states that a party may move to strike any scandalous or prejudicial matter unnecessarily inserted in a pleading" (CPLR 3024 [b]). In their cross-motion, the Defendant has shown that the Plaintiff included the John and Jane DOEs in their caption and referred to Eli Kohn as a defendant in the amended complaint. Additionally, in oral arguments, held on July 15, 2025, the Plaintiff's counsel fully admits this error, claiming it to be an honest mistake. Furthermore, the Plaintiff's counsel asks the Court for leave to remove these errors from their amended complaint and refile it. Since both parties are in agreement in regard to striking this unnecessary information, and the Defendant has met their burden, pursuant to CPLR 3024 (b), the Court grants the Defendant's motion.

Next, the Defendant moves, pursuant to 22 NYCRR 130-1.1 (c), for sanctions against the Plaintiff and the awarding of costs associated with the instant motion to the Defendant (*see* NYSCEF Doc. No. 100). Upon review, and under the court's discretion granted by 22 NYCRR 130-1, the court denies the Defendant's request for costs and sanctions, finding that the motions or actions of Plaintiff were not frivolous.

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[5] CPLR 3211 (a) (5) states that a party may move for judgment dismissing one or more causes of action asserted against him on the ground that "the cause of action may not be maintained because of arbitration and award, collateral estoppel, discharge in bankruptcy, infancy or other disability of the moving party, payment, release, res judicata, statute of limitations or statute of frauds" (CPLR 3211 [a] [5]).

[6] CPLR 3211 (a) (7) states that a party may move for judgment dismissing one or more causes of action asserted against him on the ground that "the pleading fails to state a cause of action" (CPLR [a] [7]).

Finally, the Court grants the Plaintiff's request, made at oral arguments, for leave to refile her amended complaint. Upon considering the prejudicial affect that the scrivener's errors may have had on the Defendant, pursuant to CPLR 2101 (f), the Court finds them not to be substantial enough to deny the Plaintiff's request for leave to amend their complaint. Therefore, the Court will allow the Plaintiff to file one final amended complaint with the removal of "John and Jane Does # 1-10, each an employee of Elite Care LLC" from the caption and any reference to Eli Kohn as a defendant, both explicitly and implicitly.

Accordingly, it is hereby,

ORDERED, that Plaintiff's motion (Mot. Seq. No. 6) for a default judgment is denied in its entirety, and it is further,

ORDERED, that Defendant's motion (Motion Seq. 7) seeking sanctions is denied. That part of the motion seeking to strike certain sections of the Amended Complaint is granted, and it is further,

ORDERED that Plaintiff shall file and serve her new amended complaint which corresponds with this decision and order within ten (10) days of the service of this decision and order with notice of entry; and it is further,

ORDERED that Defendant shall serve an answer to the new amended complaint or otherwise respond thereto within ten (10) days from the date of said service.

All other issues not addressed herein are either without merit or moot.

This constitutes the decision and order of the Court.

Hon. Ingrid Joseph, J.S.C.

Hon. Ingrid Joseph
Supreme Court Justice