

Taylor v City of New York

2002 NY Slip Op 30078(U)

January 29, 2002

Supreme Court, New York County

Docket Number: 0110490/2001

Judge: Joan A. Madden

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. JUAN A. MADDEN
J.S.C.
Justice

PART 11

ADRIAN TAYLOR

INDEX NO. 110490/01

MOTION DATE 1-3-02

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

- v -

CITY OF NEW YORK

The following papers, numbered 1 to _____ were read on this motion ~~to~~/for Default Judgment.

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

SCANNED

FEB 21 2002

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed Memorandum Decision and Order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Dated: February 21, 2002 _____
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 11

-----X
ANDRIAN TAYLOR and KIM E. WILLIAMS,

Index No. 110490/01

Plaintiffs,

-against-

CITY OF NEW YORK, NEW YORK CITY FIRE
DEPARTMENT and ROBERT D. SPIERS,

Defendants.
-----X

Joan A. Madden, J.

In this negligence action arising out of a motor vehicle accident, plaintiffs move for a default judgment against defendant Robert D. Spiers ("Spiers"). Defendant, the City of New York ("the City") which, while the motion was pending, served an amended answer in which it appeared on behalf of Spiers, opposes the motion. For the reasons set forth below, the motion is denied, and the City is granted permission, nunc pro tunc, to serve the amended answer.

Plaintiff Adrian Taylor ("Taylor")¹ alleges that he was injured on March 17, 2000, at approximately 3:00 a.m. when a fire truck driven by Spiers, a firefighter employed by the City, went through a red light at a 131st and Lenox Avenue in Manhattan and hit Taylor's vehicle without warning. The City timely answered the complaint. In contrast, plaintiffs submit proof that Spiers

¹Plaintiff Kim E. Williams seeks damages for loss of services.

failed to answer and/or appear even though he was served with the summons and complaint pursuant to CPLR 308(2) by service on a co-worker on May 23, 2001, and by first-class mail on May 25, 2001. Plaintiffs submit a letter dated June 13, 2001, to the Corporation Counsel requesting that an answer be served within five days of the date of the letter or plaintiffs would serve a motion for a default judgment.

No answer was served on behalf of Spiers, and on or about August 31, 2001, plaintiffs made this motion for an order entering a default judgment against Spiers in the amount of \$3 million or, alternatively, setting the matter down for an inquest. On November 15, 2001, while the motion was pending in the submissions part, plaintiffs received a copy of the City's amended answer in which it answered on behalf of Spiers. At oral argument, the City provided the court with opposition papers and plaintiffs objected to the submission as untimely.

Plaintiffs argue that the City's amended answer is a nullity as it was served after the time to answer had expired on July 1, 2001, and the City did not seek permission from the court prior to serving the amended answer. Plaintiffs also note that in their opposition papers, the City has failed to include an affidavit of merits.

In opposition, the City asserts that any delay in responding to plaintiffs' motion was the result of the World Trade Center

tragedy on September 12, 2001, and that their service of the amended answer renders the plaintiffs' motion moot.

While the court does not condone the City's conduct in this matter, the circumstances here are such that plaintiffs should be required to accept the late amended answer. "CPLR 3012(d) authorizes the court to compel the acceptance of an untimely pleading upon showing of reasonable excuse for the delay or the default." Sackman Mortgage Corp v 111 West 95th Realty Corp., 152 AD2d 463 (1st Dept 1989). Here, the events of September 11, 2001, provide a reasonable excuse for the City's delay in assessing whether to answer for the defendant fire fighter. Moreover, while the City has not provided an affidavit of merits, the relatively short delay in answering and the reasonable excuse given for the delay, warrants this court's exercise of its "inherent power in the interest of justice to favor [providing the defendant] an opportunity to defend and have a disposition on the merits." Goracy v Burns, Brooks & McNeil, 155 AD2d 256 (1st Dept 1989) (citation omitted).

Accordingly in view of the above, it is

ORDERED that plaintiffs' motion for an order granting a default judgment against defendant Spiers or, alternatively, setting this matter down for an inquest is denied; and it is further

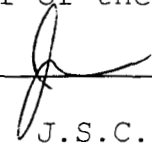
ORDERED that plaintiffs are ordered to accept service of the

amended answer nunc pro tunc; and it is further

ORDERED that any reply to the amended answer shall be served within 20 days of entry of this decision and order.

This constitutes the decision and order of the court.

DATED: January 29th, 2002



J.S.C.