

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Friedrich Lu, Plaintiff)

v)

George Hulme,)
Trustees of Boston Public Library, Defendants)

Civil Action No 12-cv-1017-MLW
2013 JUL 10 10 35 57

FILED
CLERKS OFFICE
U.S. DISTRICT COURT
DISTRICT OF MASS.

OPPOSITION TO DEFENDANTS' MOTION TO EXTEND TIME TO ANSWER

(1) Lu's June 13, 2013 motion to strike answers pointed out that defendants' belated answers without prior leave "thus circumvent[ed] the onus of meritorious defense under Rule 6(b)(1)(B) (excusable neglect)." Subsequently, defendants filed a motion for late filing of answers still "circumventing the onus of meritorious defense," which is imperative. "The three typically considered are (1) whether the default was willful; (2) whether setting it aside would prejudice the adversary; and (3) whether a meritorious defense is presented." *Indigo America, Inc v Big Impressions, LLC* (CA1 2010) 597 F.3d 1, 3; *United States v \$23,000 in United States Currency* (CA1 2004) 356 F.3d 157, 161 (time line of district court's entering default).

(2) Lu filed the complaint, cocksure defendants would go down in defeat (mindful of Fed Rule Civ Proc 11). Defendants' motions to dismiss seemed frivolous to Lu. (The court's Mar 30, 2013 Memorandum and Order at 8 had a section heading: "The Motion to Dismiss All of Lu's Claims is Not Meritorious." Said Memorandum, though, seemingly got a kick out of bloodying Lu.)

(3) That was why in his motion to strike answers, Lu singled out "meritorious defense." Without which, what is the point for the defense to keep slugging out?

(4) Lu is pretty certain defense counsel did not volunteer to defend the defendants, and that the city must have ordered her (Caroline Driscoll) to defend, a practice that Lu vows to challenge at state court. If defendants had hired private counsel (as they should have), they will not be benefited from tardy


answers by government attorneys, who may be said to be overwhelmed, overworked (though Ms Driscoll denied it).

(5) Lu hates to see Ms Driscoll's career negatively affected by the belated filing of answers. But, where is the beef of meritorious defense?

(6)

(a) At last, Lu addresses harm /prejudice to him. See defendants' memorandum in support of late filing of answers 2 ("Defendants' delay does not appear to have harmed Plaintiff's interests"), 3 ("if any harm was done to the Plaintiff, Defendants have not received any notice of such harm and cannot foresee how this delay would cause undue prejudice to Plaintiff's interests at this stage of the litigation").

(b) Greatly chafed by refusal of admission (if Lu came with a hand carrier), Lu was compelled to file the complaint as soon as he secured release of his fund to pay for the filing fee. (This court had harried him a decade ago, for inability to pay.) In companion with the complaint was a motion for temporary restraining order, because Lu really needed to get back into the city library. Lu also asked defendants to allow Lu entry, without the court having to rule on it (TRO motion) while the case is pending. Ms Driscoll noticed her appearance, but rebuffed the offer (though keep saying Lu can come in unencumbered, which is cold comfort--is Lu supposed to check the belongings at the library gates, as recommended by defendant George Hulme?) To date Lu is still out in the cold.

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A copy of this document was served electronically on Ms Driscoll on the same day.