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| Leigh v Castor and Pollux Ltd. |
| 2019 NY Slip Op 30251(U) |
| February 1, 2019 |
| Supreme Court, New York County |
| Docket Number: 654923/2017 |
| Judge: David Benjamin Cohen |
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DAVID BENJAMIN COHEN PART IAS MOTION 58EFM

Justice

-----X INDEX NO. 654923/2017

STACY LEIGH,

Plaintiff,

03/23/2018,
07/10/2018,
MOTION DATE 07/30/2018

- v -

MOTION SEQ. NO. 001 002 003

CASTOR AND POLLUX LTD. LLC D/B/A CASTOR GALLERY
AND/OR CASTOR AND POLLUX LIMITED LIABILITY COMPANY
D/B/A CASTOR GALLERY, SEAN NICHOLAS, JUSTIN
DEDEMKO

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for JUDGMENT - DEFAULT.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 48

were read on this motion to/for VACATE -
DECISION/ORDER/JUDGMENT/AWARD.

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

were read on this motion to/for PRO HAC VICE.

Upon the foregoing documents, it is

Motions bearing sequence numbers 001, 002 and 003 are consolidated for disposition.

In motion sequence 001, plaintiff Stacy Leigh moves, pursuant to CPLR § 3215, for a default judgment, an inquest as to damages and an order of seizure against defendants Castor and Pollux Ltd. LLC d/b/a Castor Gallery, Castor and Pollux Limited Liability Company d/b/a Castor Gallery (collectively Castor Gallery), Sean T. Nicholas (Nicholas), and Justin A. DeDemko (DeDemko). In motion sequence 002, defendants move for leave to file an answer, counterclaims and third-party complaint.

Plaintiff, an artist, commenced this action on July 20, 2017, seeking to recover numerous works of art which plaintiff had consigned to defendants Nicholas and DeDemko, who are the owners and operators of the Castor Gallery. According to plaintiff, service on defendants was fully completed by December 2, 2017 and defendants have not answered, moved, or appeared.

“Under CPLR 3012(d), a trial 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.” *Emigrant Bank v Rosabianca*, 156 AD3d 468, 472 (1st Dept 2017). The court should consider factors such as the length of the delay, the excuse offered for the delay, whether the delay was willful, potential prejudice to adverse parties, and the merits of any defense. *Id.* at 472-473.

Here, defendants have put forth several reasons for the delay in serving an answer. First, defendants state that the parties participated in extensive settlement negotiations over a period of months, pursuant to which defendants agreed to return the items sought by plaintiff. Such negotiations did not ultimately succeed. Defendants also state that this matter was set for mediation, which was delayed due to a serious illness of a family member of defendants’ attorney. Defendants also state that delay resulted from their efforts to obtain a New York attorney.

Defendants’ motion is granted. Defendants have put forth several reasons for their delay and, significantly, plaintiff has not demonstrated any prejudice from the delay such as would warrant denial of the motion.

Defendants have also set forth a defense to plaintiff’s claim, based on defendants’ assertion that plaintiff breached its obligations under the parties’ agreement by exhibiting and

selling her art at a competing gallery. As such, the court finds it preferable to allow this action to be decided on its merits.

In light of the foregoing, plaintiff's motion for a default judgment is denied.

In motion sequence 003, Russell M. Woods (Woods), a member of the firm of Bramnick, Rodriguez, Grabas, Arnold & Mangan, LLC moves, pursuant to 22 NYCRR § 520.11, for admission to argue or try this action, in whole or in part as counsel for defendants.

The motion is granted. Movant is a member of the bar of New Jersey and has averred that he has never been disciplined or disbarred. He also states that he is familiar with New York State statutes, rules and procedures and will comply therewith. Therefore, in the exercise of discretion, the court grants the motion for admission *pro hac vice*. See 22 NYCRR § 520.11.

Accordingly, it is

ORDERED that the motion for a default judgment by plaintiff Stacey Leigh is denied; and it is further

ORDERED that the motion for leave to file an answer, counterclaims and third-party complaint by defendants Castor and Pollux Ltd. LLC d/b/a Castor Gallery, Castor and Pollux Limited Liability Company d/b/a Castor Gallery, Sean T. Nicholas, and Justin A. DeDemko is granted and the answer and third-party complaint shall be filed within twenty days of service of a copy of this order with notice of entry; and it is further

ORDERED that the motion for leave to appear *pro hac vice* (sequence 003), is granted and Russell M. Woods, Esq. is permitted to appear and to participate in this action on behalf of defendants, and it is further

ORDERED that he shall at all times during this action be associated with counsel who is a member in good standing of the Bar of the State of New York and is attorney of record for the aforesaid party; and it is further

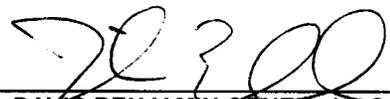
ORDERED that all pleadings, briefs, and other papers filed with the court shall be signed by the attorney of record, who shall be responsible for such papers and for the conduct of this action; and it is further

ORDERED that, pursuant to Section 520.11 of the Rules of the Court of Appeals and Section 602.2 of the Rules of the Appellate Division, First Department, the attorney hereby admitted *pro hac vice* shall be familiar with and abide by the standards of professional conduct imposed upon members of the New York Bar, including the rules of the courts governing the conduct of attorneys and the Rules of Professional Conduct; and it is further

ORDERED that he shall be subject to the jurisdiction of the courts of the State of New York with respect to any acts occurring during the course of his/her participation in this matter; and it is further

ORDERED that said counsel shall notify the court immediately of any matter or event in this or any other jurisdiction that affects his/her standing as a member of the bar.

2/1/2019
DATE



DAVID BENJAMIN COHEN, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED DENIED
- SETTLE ORDER
- INCLUDES TRANSFER/REASSIGN

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

- OTHER
- REFERENCE

HON. DAVID B. COHEN
J.S.C.