

Horowitz v JP Morgan Chase
2020 NY Slip Op 34046(U)
December 8, 2020
Supreme Court, New York County
Docket Number: 652972/2015
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

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STACEY HOROWITZ,
Plaintiff,

INDEX NO. 652972/2015
MOTION DATE N/A, N/A
MOTION SEQ. NO. 002 003

- v -

JP MORGAN CHASE, JP MORGAN CHASE & CO., JP MORGAN CHASE NA, JP MORGAN CHASE BANK, JP MORGAN, CHASE BANK, CHASE, CHASE BANK, ; JP MORGAN; ASSET MANAGEMENT; COUNTY AS THE PLACE OF TRIAL JP MORGAN SECURITIES;LLC;, JP MORGAN INSTITUTIONAL FUNDS SERVICES, AMERICAN CENTURY INVESTMENT SERVICES, INC, AMERICAN CENTURY PROPRIETARY HOLDINGS INC, AMERICAN CENTURY INVESTMENTS, NATHAN HOROWITZ, JANE DOE

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, 45, 52, 53

were read on this motion to/for JUDGMENT - DEFAULT

The following e-filed documents, listed by NYSCEF document number (Motion 003) 46, 47, 48, 49, 50, 51, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68

were read on this motion to/for DISMISS

Upon the foregoing documents

Plaintiff, as the assignee of third-party plaintiff American Century Investments ("ACI"), moved (Motion Sequence 2) for a default judgment against defendant JP Morgan Chase Bank, N.A. ("Chase") based upon Chase's failure to answer the third-party complaint. Chase opposed the motion and moved to dismiss the Complaint filed by plaintiff.

Plaintiff commenced this action by summons with notice on August 27, 2015. Over a year later, on November 14, 2016, plaintiff filed the Complaint and served it on ACI and an entity, JP Morgan Chase &co. On May 26, 2017, ACI filed its Answer with a cross-claim

against JP Morgan Chase Bank, N.A. The crossclaim alleged Chase, not ACI, was liable to plaintiff to the extent plaintiff's claim was granted against ACI, or any judgment/order was entered awarding damages to plaintiff and against ACI, or if ACI was otherwise found liable to plaintiff, ACI was entitled to full indemnification and contribution from Chase. The cross-claim was served on June 6, 2017.

On November 9, 2017, plaintiff filed a motion seeking a default judgment against Chase. On February 27, 2018, this Court denied the motion as the affidavit of service on plaintiff's claim was not for Chase but rather JP Morgan Chase &co. Indeed, plaintiff never served Chase and only served JP Morgan Chase &co. On December 4, 2019, plaintiff filed Motion Sequence 2. Plaintiff argues that on April 23, 2019, ACI and plaintiff entered into an agreement that assigned all of ACI's right, title and interest in the crossclaim. As Chase was served by ACI and failed to answer, plaintiff, as the assignee of ACI, was seeking a default judgment based upon this failure to answer. Chase opposed the motion and filed its own motion (Motion Sequence 3) to dismiss all claims against it except for the claims against JP Morgan Chase &co.

As a threshold, with respect to claims against entities with some iteration of Chase in its name, all claims against any entity other than JP Morgan Chase &co and Chase are dismissed as neither plaintiff, nor ACI contends that such entities were served. Specifically, as previously ruled, Chase was not served by plaintiff and any direct claim by plaintiff against Chase is dismissed.

Further, as described above Chase was served by ACI on June 6, 2017. ACI did not move for a default judgment during the one year period required under CPLR 3215(c). This motion was not filed until December 2019, more than two and a half years after Chase was served by ACI. Even assuming plaintiff steps into the shoes of ACI, ACI was required to seek a

default judgment long before plaintiff and ACI entered into their agreement and thus, steps into those “shoes.” No explanation for the delay was provided, nor was an explanation provided why there was a nearly eight-month delay in plaintiff seeking a default judgment against Chase once it was assigned the rights. Plaintiff’s evidence in continuing engagement in this lawsuit was a motion filed in November 2017, two years prior to this motion and decided shortly thereafter in February 2018. It took the Court’s initiative by placing this matter on the dismissal/blockbuster calendar to have any movement in this action. Thus, for failure to move for a default judgment in a timely manner, the motion is denied. The Court also notes that ACI served a Jane Doe and Nathan Horowitz, but no one has moved against those defendants. Similarly, plaintiff never moved for a default judgment against JP Morgan Chase &co. Pursuant to CPLR 3215(c), the claims against them are also dismissed.

Further, the settlement agreement between ACI and plaintiff includes a statement of no liability or admission of guilt/fault by ACI and that the sole consideration was the assignment of ACI’s claims against Chase. In addition, plaintiff’s action against Chase has now been dismissed. ACI, and thus plaintiff’s claim, is entirely premised that to the extent plaintiff’s claim was granted against ACI, or any judgment/order was entered awarding damages to plaintiff and against ACI, or if ACI was otherwise found liable to plaintiff, ACI was entitled to full indemnification and contribution from Chase. Here, the Court has ruled that there is no claim against Chase and the matter between plaintiff and ACI has been resolved. Thus, as there is no liability against ACI and no monetary consideration, the claim for indemnification fails as neither Chase, nor ACI has monetary liability to plaintiff. Accordingly, it is therefore

ORDERED that plaintiff’s motion for a default judgment against JP Morgan Chase Bank, N.A. is denied; and it is further

