

Abdelrahim v 47-03 Junction Realty Inc.

2020 NY Slip Op 35594(U)

August 7, 2020

Supreme Court, Queens County

Docket Number: Index No. 703535/19

Judge: Timothy J. Dufficy

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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. TIMOTHY J. DUFFICY
Justice

PART 35

-----X
RAEDA ABDELRAHIM,
Plaintiff,

Index No.: 703535/19
Mot. Date: 8/4/20
Mot. Seq. 2

-against-

**47-03 JUNCTION REALTY INC., COLGATE
ENTERPRISE CORP., RONI CONTRACTING
CORP., NEW HO XIN DEVELOPMENT
INC.,**

Defendants.

-----X
The following papers read on this motion by plaintiff for a default judgment against defendants, **47-03 JUNCTION REALTY INC (Junction Realty), RONI CONTRACTING CORP. (Roni Contracting), and NEW HO XIN DEVELOPMENT INC. (New Ho Xin)**, pursuant to CPLR 3215; and on the cross-motion by defendant Junction Realty for an order compelling acceptance of said defendant’s Verified Answer.

	PAPERS
	<u>NUMBERED</u>
Notice of Motion-Affidavits-Exhibits.....	EF 22-30
Notice of Cross-Motion-Affidavits-Exhibits.....	EF 35-40
Affidavits in Opposition to Cross-Motion.....	EF 41-47

Upon the foregoing papers, it is ordered that plaintiff’s motion for a default judgment is granted in part and denied in part, as set forth below; and defendant Junction Realty’s cross-motion to compel acceptance of its Answer is granted.

The underlying action is one arising out of a January 26, 2017 incident wherein the plaintiff alleges that he was struck by material while at the defendants’ premises, located at 4703 Junction Boulevard, Flushing, New York. Plaintiff contends that he sustained serious personal injuries due to, *inter alia*, the negligence of the defendants.

Plaintiff maintains that he served defendants Junction Realty, Roni Contracting and New Ho Xin with the Summons and Verified Complaint through the Secretary of State, in March, 2019, and that said defendants failed to timely Answer or appear. Plaintiff moves for a default judgment and an assessment of damages as against defendants Junction Realty, Roni Contracting, and New Ho Xin. Defendant, Junction Realty contends that it did file an Answer, albeit untimely, on November 13, 2019, and now moves to compel acceptance of such Answer.

Those branches of the motion for a default judgment as against defendants Roni and New Ho Xin are granted, as to liability only, as said defendants failed to appear, submit an Answer, or move with respect to the Complaint herein (*See* CPLR 3215). Plaintiff demonstrated the merits of his claim by submitting an affidavit of merits as part of his motion (*see* CPLR 3215[f]; *Woodson v Mendon Leasing Corp.*, 100 NY2d 62 [NY 2003]); *Henriquez v Purins*, 245 AD2d 337 [2d Dept 1997]). Defendants Roni and New Ho Xin failed to respond to plaintiff's instant motion.

Turning next to the branch of the motion for a default judgment as against defendant Junction Realty and to the cross-motion by said defendant, the cross-motion is granted and the branch of the motion for a default judgment against Junction Realty is denied.

The record reflects that defendant Junction Realty was served with a Summons and Complaint, in March, 2019 and that it served and filed a Verified Answer in November, 2019.

Pursuant to CPLR 2004, courts can extend the time imposed by statute upon good cause shown. Pursuant to CPLR 3012(d), “[u]pon the application of a party, the court may extend the time to appear or plead, or compel the acceptance of a pleading untimely served, upon such terms as may be just and upon a showing of reasonable excuse for delay or default.”

It is well-established law that: “[a] defendant who has failed to timely appear or answer the complaint must provide a reasonable excuse for the default and demonstrate a meritorious defense to the action, when . . .moving . . .to compel the acceptance of an untimely answer.” (*Lipp v Port Authority of New York and New Jersey*, 34 AD3d 649 [2d Dept 2006]). The record reflects that the delay was minimal. The Court finds that there

is no evidence of prejudice and that defendant Junction Realty has provided a reasonable excuse for the delay in that there was law office error in that: Junction Realty was seeking a law firm to take over its defense to the action, and the owner was unaware that the complaint had not been answered. Additionally, said defendant has presented a meritorious defense to the action via an affidavit of President of defendant, Junction Realty, Dong Sheng Zheng.

The Appellate Division, Second Department, has held that where there is a lack of prejudice to the plaintiff, a meritorious defense, and a 2½ month delay in serving the answer, in light of the public policy of resolving cases on the merits, such a delay in serving the answer should be overlooked (*Kaiser v Delaney*, 255 AD2d 362 [2d Dept 1998]). Here, the Court notes that defendant Junction Realty's default in serving an Answer was relatively brief (*See Mulder v Rockland Armor & Metal Corp.*, 140 AD2d 315 [2d Dept 1988], stating "[i]n view of the relatively short period of the delay, the absence of any claim of prejudice to the plaintiff, the existence of a possible meritorious defense, the absence of any willfulness on the appellants' part and the public policy in favor of resolving cases on the merits, the Supreme Court should have . . . granted the appellants leave to file late answers." As such, the plaintiff is compelled to accept defendant Junction Realty's Verified Answer, attached as "Exhibit "C-3", to the instant cross-motion.

Accordingly, it is

ORDERED that plaintiff's motion for a default judgment is granted in part and denied in part; and it is further

ORDERED that the branches of plaintiff's motion for a default judgment as against defendants Roni Contracting, Inc. and New Ho Xin Development Inc. is granted ONLY as to these defendants; and it is further

ORDERED that an Inquest to determine damages shall be held in abeyance until the trial or resolution of the action against the remaining defendants (*Vierya v Briggs & Stratton Corp.*, 184 AD2d 766 [2d Dept 1992] [inquest for damages against defaulting

defendant to await end of trial against all defendants in interest of judicial economy)]; and it is further

ORDERED that the branch of the plaintiff’s motion for a default judgment as against defendant Junction Realty is denied, for the reasons stated above; and it is further

ORDERED that the cross-motion by defendant 47-03 Junction Realty Inc. for an order compelling acceptance of said defendant’s Verified Answer is granted; and it is further

ORDERED that plaintiff is compelled to accept defendant Junction Realty’s Verified Answer, attached as “Exhibit “C-3”, to the instant cross-motion

The foregoing constitutes the decision and order of this Court.

Dated: August 7, 2020



**FILED & RECORDED
8/10/2020
3:04 PM
COUNTY CLERK
QUEENS COUNTY**

TIMOTHY J. DUFFICY, J.S.C.