

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND DEPARTMENT

Karalis v. New Dimensions HR, Inc.

105 A.D.3d 707 (N.Y. App. Div. 2013) · Decided April 3, 2013

SUMMARY

The New York Appellate Division, Second Department, reversed an order denying the plaintiffs' motion for a default judgment on liability and granting the defendants' cross motion to vacate their default and serve a late answer. The court held that the defendants failed to establish both a reasonable excuse for their default and a potentially meritorious defense.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Rivera, J.E.; Dickerson, J.; Leventhal, J.; Lott, J.
JURISDICTION	New York
DECIDED	April 3, 2013
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiffs appealed from the portion of an order denying their CPLR 3215 motion for leave to enter a default judgment on liability and granting defendants' cross motion to vacate their default and serve a late answer.
STANDARD OF REVIEW	The Appellate Division reviewed the Supreme Court's determination under the requirements governing vacatur of a default and leave to serve a late answer.
PRECEDENTIAL VALUE	Published opinion of the New York Appellate Division, Second Department.
PARTIES	Karalis v. New Dimensions HR, Inc., Ingraham Contracting

TOPICS

- default judgment
- default
- civil procedure
- breach of contract
- commercial litigation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether plaintiffs established entitlement to a default judgment on liability under CPLR 3215.
2. Whether defendants demonstrated both a reasonable excuse for their default and a potentially meritorious defense sufficient to vacate the default and obtain leave to serve a late answer.

HOLDINGS

1. Plaintiffs established their entitlement to judgment on liability by submitting proof of service, proof of the facts constituting their claim, and proof of defendants' failure to appear or answer.
2. Defendants were required to demonstrate both a reasonable excuse for their default and the existence of a potentially meritorious defense, and they failed to make either showing sufficient to defeat plaintiffs' motion.

KEY QUOTATIONS

“The plaintiffs demonstrated their entitlement to judgment on the issue of liability against the defendants New Dimensions HR, Inc., and Ingraham Contracting (hereinafter together the New Dimensions defendants) by submitting proof of service of the summons and complaint, proof of the facts constituting their claim, and proof of those defendants’ failure to answer or appear” (105 A.D.3d at 707)

“To successfully oppose the plaintiffs’ motion for leave to enter a default judgment against them, the New Dimensions defendants were required to demonstrate a reasonable excuse for their default and the existence of a potentially meritorious defense” (105 A.D.3d at 708)

FACTUAL BACKGROUND

Plaintiffs served the summons and complaint on New Dimensions HR, Inc. and Ingraham Contracting, but those defendants failed to appear or answer within the required time. Their attorney may have engaged in settlement negotiations for several months after the answer period expired, but the defendants did not substantiate that the additional lengthy delay in seeking leave to serve a late answer resulted from those negotiations. The defendants relied only on an attorney-verified answer and attorney affirmation, neither of which was based on personal knowledge of the facts.

PROCEDURAL HISTORY

In an action including a breach-of-contract claim, the Supreme Court, Suffolk County, denied plaintiffs' motion for leave to enter judgment against New Dimensions HR, Inc. and Ingraham Contracting based on their failure to appear or answer. The court granted those defendants' cross motion to vacate their default and obtain leave to serve a late answer. The Appellate Division reversed that portion of the order, granted plaintiffs' motion, and denied defendants' cross motion.

DISPOSITION

reversed

CASES CITED

- *Wassertheil v. Elburg, LLC*, 94 A.D.3d 753, 753 (2012)
- *C&H Import & Export, Inc. v. MNA Global, Inc.*, 79 A.D.3d 784, 785 (2010)
- *Eugene Di Lorenzo, Inc. v. A.C. Dutton Lbr. Co.*, 67 N.Y.2d 138, 141 (1986)
- *Bank of N.Y. Mellon v. Izmirligil*, 88 A.D.3d 930, 931 (2011)
- *Wells Fargo Bank, N.A. v. Cervini*, 84 A.D.3d 789, 789 (2011)
- *Kouzios v. Dery*, 57 A.D.3d 949, 950 (2008)
- *Antoine v. Bee*, 26 A.D.3d 306, 306 (2006)
- *Majestic Clothing Inc. v. East Coast Stor., LLC*, 18 A.D.3d 516, 518 (2005)
- *Ogman v. Mastrantonio Catering, Inc.*, 82 A.D.3d 852, 853 (2011)
- *Gross v. Kail*, 70 A.D.3d 997, 998 (2010)
- *Juseinoski v. Board of Educ. of City of N.Y.*, 15 A.D.3d 353, 356 (2005)

OPINION

Karalis v. New Dimensions HR, Inc. 105 A.D.3d 707

PER CURIAM.

In an action, inter alia, to recover damages for breach of contract, the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Suffolk County (Pastoressa, J.), dated February 3, 2011, as denied their motion pursuant to CPLR 3215 for leave to enter judgment on the issue of liability against the defendants New Dimensions HR, Inc., and Ingraham Contracting, upon their failure to appear or answer the complaint, and granted the cross motion of the defendants New Dimensions HR, Inc., and Ingraham Contracting to vacate their default in appearing or answering the complaint and for leave to serve a late answer. Ordered that the order is reversed insofar as appealed from, on the law, with costs, the plaintiffs' motion pursuant to CPLR 3215 for leave to enter judgment on the issue of liability against the defendants New Dimensions HR, Inc., and Ingraham Contracting, upon their failure to appear or answer the complaint, is granted, and the cross motion of the defendants New Dimensions HR, Inc., and Ingraham Contracting to vacate their default in appearing or answering the complaint and for leave to serve a late answer is denied. The plaintiffs demonstrated their entitlement to judgment on the issue of liability against the defendants New Dimensions HR, Inc., and Ingraham Contracting (hereinafter together the New Dimensions defendants) by submitting proof of service of the summons and complaint, proof of the facts constituting their claim, and proof of those defendants' failure to answer or appear (see CPLR 3215 [f]; *Wassertheil v Elburg, LLC*, 94 AD3d 753, 753 [2012]; *C&H Import & Export, Inc. v MNA Global, Inc.*, 79 AD3d 784, 785 [2010]). To successfully oppose the plaintiffs' motion for leave to enter a default judgment against them, the

New Dimensions defendants were required to demonstrate a reasonable excuse for their default and the existence of a potentially meritorious defense (see CPLR 5015 [a] [1]; *Eugene Di Lorenzo, Inc. v A.C. Dutton Lbr. Co.*, 67 NY2d 138, 141 [1986]; *Wassertheil v Elburg, LLC*, 94 AD3d at 753; *Bank of N.Y. Mellon v Izmirligil*, 88 AD3d 930, 931 [2011]; *Wells Fargo Bank, N.A. v Cervini*, 84 AD3d 789, 789 [2011]). While the New Dimensions defendants' attorney may have engaged in settlement negotiations with the plaintiffs' attorney for a few months after the New Dimensions defendants' time to answer had expired, those defendants failed to substantiate that the further lengthy delay in seeking leave to serve a late answer, even after the plaintiffs indicated their intent to move for a default judgment, was due to settlement negotiations (see *Bank of N.Y. Mellon v Izmirligil*, 88 AD3d at 931; *Kouzos v Dery*, 57 AD3d 949, 950 [2008]; *Antoine u Bee*, 26 AD3d 306, 306 [2006]; *Majestic Clothing Inc. v East Coast Stor., LLC*, 18 AD3d 516, 518 [2005]). Furthermore, the New Dimensions defendants submitted only an answer verified by, and the affirmation of, their attorney, and since the attorney had no personal knowledge of the facts, those documents were insufficient to demonstrate the existence of a potentially meritorious defense (see *Ogman v Mastrantonio Catering, Inc.*, 82 AD3d 852, 853 [2011]; *Gross v Kail*, 70 AD3d 997, 998 [2010]; *Ju*709seinoski v Board of Educ. of City of N.Y.*, 15 AD3d 353, 356 [2005]). Accordingly, the plaintiffs' motion for leave to enter a default judgment on the issue of liability against the New Dimensions defendants should have been granted, and the cross motion of those defendants to vacate their default in appearing or answering the complaint and for leave to serve a late answer should have been denied. Rivera, J.E, Dickerson, Leventhal and Lott, JJ., concur.