

Decided on June 17, 2008

Supreme Court, Queens County

Kira L. Bryant, Plaintiff,
against
The City of New York, et al., Defendants.

14080 2007

Phyllis Orlikoff Flug, J.

On March 2, 2006, the plaintiff allegedly sustained injuries when her car was involved in a motor vehicle accident with a car driven by Yisrael and owned by the NYC defendants. The plaintiff filed a notice of claim pursuant to General Municipal Law § 50-e, and commenced the instant action by filing a summons and complaint on June 1, 2007, 1 year and 91 days after the happening of the accident. The NYC defendants served their answer on July 2, 2007 and served an amended answer on behalf of Yisrael on August 15, 2007, wherein it was not denied that Yisrael was acting within the scope of his employment with the NYC defendants at the time of the occurrence.

It is undisputed that the NYC defendants untimely served their answer ten days late on July 2, 2007. A defendant seeking to vacate its default in appearing or answering the complaint must provide a reasonable excuse for the default and demonstrate a meritorious defense to the action (*see Weinberger v Judlau Contr.*, 2 AD3d 631 [2004]; *Kaplinsky v Mazor*, 307 AD2d 916 [2003]; *Ennis v Lema*, 305 AD2d 632 [2003]; *O'Shea v Bittrolff*, 302 AD2d 439 [2003]). The determination of what constitutes a reasonable excuse lies within the sound discretion of the court (*see Matter of Gambardella v Ortov Light.*, 278 AD2d 494 [2000]). The affirmation of Corporation Counsel bemoaning the disproportionate number of complaints compared to Corporation Counsel's staff is insufficient to establish that the failure to timely answer was not willful but due to law office failure (*see CPLR 2005; Valure v Century 21 Grand*, 35 AD3d 591 [2006]; *Whitfield v State of New York*, 28 AD3d 541 [2006]; *Hospital for Joint Diseases v ELRAC, Inc.*, 11 AD3d 432 [2004]; *Weekes v Karayianakis*, 304 AD2d 561 [2003]).

However, the defendants demonstrate a meritorious defense. General Municipal Law § 50-i, states in relevant part: "(c) the action or special proceeding shall be commenced within one [*2]year and ninety days after the happening of the event upon which the claim is based". Thus, the plaintiff's action against the NYC defendants is time barred because it was not commenced within the 1-year and 90-day period specified in General Municipal Law § 50-i (*Antoine v New York City Health & Hosps. Corp.*, 46 AD3d 726 [2007]; *Pietrowski v City of New York*, 166 AD2d 423 [1990]; *Bacalokstantis v Nichols*, 141 AD2d 482 [1988]). With respect to defendant Yisrael, the allegation in the plaintiff's complaint that Yisrael was, in fact, acting within the scope of his employment when the accident occurred, coupled with Yisrael's failure to deny the allegation in his answer compels the conclusion that the time constraints contained in General Municipal Law § 50-i are equally applicable to Yisrael. Therefore, the court concludes that since Yisrael was served with the pleadings after the 1-year and 90-day statute of limitations had elapsed, the action as against Yisrael must also be dismissed as untimely (*see Bacalokstantis v Nichols, supra*).

Accordingly, defendants' motion is granted to the extent that the plaintiff's action is dismissed against the NYC defendants and Yisrael for failure to comply with General Municipal Law §50-i; plaintiff's cross motion is denied as academic.

Finally, the court imposes a monetary sanction of \$350.00 against the defendants' counsel for their failure to timely answer (*see Gradaille v City of NY*, NYLJ 6/12/08, p. 37, col. 3).

Dated: June 17, 2008 _____

J.S.C.