

SHORT FORM ORDER

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: HONORABLE Leonard Livote
Supreme Court Justice

IAS TERM, PART 33

-----x
FEDERATION OF HELLENIC SOCIETIES OF
GREATER NEW YORK, INC.,

Index No:706121/2022

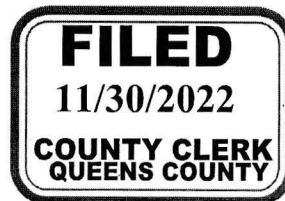
Motion Date:
11/15/22

Plaintiff(s),

Seq. No: 1

-against-

DEMETRIUS KALAMARAS,
CLEANTHIS MEIMAROGLU,
DIMOS SIOKIS, ELIAS TSEKERIDIS,
NIKOLAOS DIAMANTIDIS AND DIMITRIS
GONIAS



Defendant(s).

-----x

The following papers read on this motion by plaintiff for a default judgment and, the cross motion by defendants for an Order pursuant to CPLR 3012(d) extending Defendant's time to appear and serve an answer upon plaintiff, and/or compelling plaintiff to accept Defendant's answer, for an order pursuant to CPLR § 602(a) consolidating the above-entitled proceedings with the proceeding captioned "Federation of Hellenic Societies of Greater New York, Inc., v. George Georgopoulos, Apostolos Tomopoulos, Nicholas Vellios, Timeoleon Kakouros and Ioannis Koutalis" Index No. 722284/2021 Queens County Supreme Court, State of New York upon the ground that the same grounds for review are asserted and a common question of law or fact is presented, or in the alternative staying the above proceeding pursuant to CPLR 2201.

Papers
Numbered

Order to Show Cause - Affidavits - Exhibits.....	15-23
Notice of Motion - Affidavits - Exhibits.....	
Notice of Cross Motion - Affidavits - Exhibits...	26-40
Answering Affidavits - Exhibits.....	41-55
Reply - Affidavit - Exhibits.....	

Upon the foregoing papers, the motion is denied and the cross motion is granted in part and denied in part.

Defendants cross-move to serve a late answer.

"In order to avoid the entry of a default judgment, a

defendant who has failed to appear or answer the complaint must provide a reasonable excuse for the default and demonstrate a potentially meritorious defense to the action" (*Jong Gwon Kim v. Strippoli*, 144 A.D.3d 982, 983, 42 N.Y.S.3d 245). A defendant who moves pursuant to CPLR 3012(d) to compel the plaintiff to accept late service of an answer is required to make a similar showing (see *id.* at 983, 42 N.Y.S.3d 245). CPLR 3012(d) expressly provides that "[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." "The determination of what constitutes a reasonable excuse lies within the Supreme Court's discretion" (*Gershman v. Ahmad*, 131 A.D.3d 1104, 1105, 16 N.Y.S.3d 836; see *Stewart Tit. Ins. Co. v. Bank of N.Y. Mellon*, 154 A.D.3d 656, 661, 61 N.Y.S.3d 634). "Whether a proffered excuse is 'reasonable' is a 'sui generis determination to be made by the court based on all relevant factors, including the extent of the delay, whether there has been prejudice to the opposing party, whether there has been willfulness, and the strong public policy in favor of resolving cases on the merits' " (*Fried v. Jacob Holding, Inc.*, 110 A.D.3d 56, 60, 970 N.Y.S.2d 260, quoting *Harcztark v. Drive Variety, Inc.*, 21 A.D.3d 876, 876-877, 800 N.Y.S.2d 613)." (Yuxi Li v Caruso, 161 AD3d 1132, 1133-34 [2d Dept 2018]). "[A] showing of a potential meritorious defense is not an essential component of a motion to serve a late answer (CPLR 3012 [d]) where, as here, no default order or judgment has been entered" (*Jones v 414 Equities LLC*, 57 AD3d 65, 81, 866 N.Y.S.2d 165 [1st Dept 2008]).

In the instant case, the delay in answering has been relatively short, there is no substantial prejudice and a lack of wilfulness as the parties were engaged in settlement negotiations. Furthermore, defendants have demonstrated a potentially meritorious defense. Accordingly, the plaintiff's motion for a default judgment is denied, the cross motion is granted to the extent that it is,

ORDERED, that defendants time to answer is extended to 20 days after service of this Order with notice of entry.

Any other or further relief requested and not specifically addressed is denied.

This constitutes the Order of the Court.

Dated: November 15, 2022



Leonard Livote, J.S.C.