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Failure To Answer Complaint Results In Default Judgment

BY HELEN NGUYEN
DAILY RECORD REPORTER

Should the court grant the plaintiff's motion for default against the defendant because the defendant failed to answer the plaintiff's amended complaint?

In *Samuel Jenkins v. Times Square Books/Video, Trans World News, Andrew Miranda and William Doe*, the plaintiff filed a lawsuit in the U.S. District Court for the Western District of New York against several defendants, in which he alleged claims of employment discrimination. In a recent motion by the plaintiff, he sought an entry of default against all of the defendants based on their failure to answer his amended complaint.

After reviewing the applicable federal rules, U.S. District Court Judge Charles J. Siragusa granted the plaintiff's motion for default against one of the defendants based on its failure to answer the amended complaint. The judge found that the court did not have jurisdiction over the other three defendants since the plaintiff failed to properly serve the amended complaint to them.

Case Background

In January 2003, the plaintiff, Samuel Jenkins, filed a lawsuit against his employer, Times Square Books/Video, in which he alleged claims of employment discrimination under Title VII of the Civil Rights Act. Times Square Books filed an answer to the complaint.

On June 2, 2003, the plaintiff filed a first amended complaint, in which he added causes of action under 42 USC § 1981, the New York State Human Rights Law and Chapter 63 of the Rochester Municipal Code. The plaintiff also added Trans World News, Andrew Miranda and William Doe as defendants. According to the plaintiff, Miranda and Doe were agents of Trans World, who allegedly participated in the discriminatory acts.

The plaintiff's attorney claimed that the amended complaint was served by mail on all of the defendants on May 30, 2003, but the court noted that in the attached summons, the space reserved for listing the defendants to whom the summons was to be served was blank. Moreover, while the court docket

showed that summonses were issued for Trans World, Miranda and Doe, it did not show any return of service other than the one from Times Square Books.

None of the defendants answered the amended complaint.

Motion For Default

Based on the defendants' failure to respond to the amended complaint, the plaintiff moved for default judgment in August 2003. The motion was served by mail to all of the defendants.

Similar to the amended complaint, none of the defendants filed a response to the plaintiff's motion.

Court's Discussion

Should the court grant the plaintiff's request for an entry of default?

Federal Rule of Civil Procedure 55(a) provides that "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default."

Citing *Wright & Miller, 10A Federal Practice and Procedure Civ. 3d* § 2682, Judge Siragusa explained that the first step in assessing whether default was warranted involved the court determining whether the defendants were properly served, which would provide the court with jurisdiction over them.

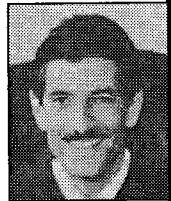
After finding that the plaintiff failed to serve the first amended complaint on Trans World, Miranda and Doe, the court held that they were not properly served and thus the court did not have jurisdiction over them. See New York Civil Procedure Law and Rules §§ 308 and 311, which provide rules for the personal service on a person and corporation.

In contrast, the court found that it had personal jurisdiction over Times Square Books, based on the fact that the company filed an answer to the original complaint and failed to raise the issue of insufficient service.

The court also referred to *Paries v. Riccelli Haulers, Inc.*, 672 F.Supp 72, 74 (NDNY) 1987, where it was held that an entry of a default

WHAT THE COURT RULED

Samuel Jenkins v. Times Square Books/Video, Trans World News, Andrew Miranda and William Doe, U.S. District Court for the Western District of New York



U.S. DISTRICT
JUDGE CHARLES
J. SIRAGUSA

INDEX NO.: 03-CV-6009

ISSUE: Should the court grant the plaintiff's motion for default against the defendant because the defendant failed to answer the plaintiff's amended complaint?

RULING: Yes. The court granted the plaintiff's motion for an entry of default.

ATTORNEY FOR PLAINTIFF: Michael J. Lingle

ATTORNEY FOR TIMES SQUARE BOOKS: John Walsh

was justified when a defendant failed to answer an amended complaint despite having answered the initial complaint.

"The court finds the *Paries* case persuasive, especially since the original complaint in the case at bar alleged a cause of action only under Title VII of the Civil Rights Act of 1964 (as amended) and the first amended complaint added causes of action under 42 USC § 1981, the New York State Human Rights Law and Chapter 63 of the Rochester Municipal Code, in addition to adding three new parties," wrote Judge Siragusa. "Furthermore, the Federal Rules of Civil Procedure provide that when an amendment is allowed (either by order or consent), '[a] party shall plead in response to an amended pleading within the time remaining for responses to the original pleading or within 10 days after service of the amended pleading, whichever period may be longer, unless the court otherwise orders.' Fed. R. Civ. P. 15(a)."

Based on the above, the court granted the plaintiff's motion for an entry of default against Times Square Books.