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JOHN B. GARRITY, JR.-FOR DEFENDANT-AFFIRMATION-MAY 8, 1980  
[A11-A137]  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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GEORGE SASSOWER,

Plaintiff,

-against-

APPELLATE DIVISION OF THE SUPREME COURT,  
SECOND JUDICIAL DEPARTMENT,

Defendant.

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AFFIRMATION

INDEX NO. 1979/21225

I, JOHN B. GARRITY, JR., hereby affirm pursuant to CPLR 4106 that:

1. I am an Assistant Attorney General, of counsel to ROBERT ABRAMS, Attorney General of the State of New York, counsel to defendant, and as such, have been assigned the defense of this action and am familiar with the facts herein. I make this Affirmation in opposition to plaintiff's application for default judgment.

2. The defendant was served with a summons in the above captioned action on November 21, 1979. (Exhibit A annexed).

3. On December 6, 1979, I served a Notice of Appearance and Demand for Complaint upon the plaintiff pro se by mail. The original was filed with the Court. (Copy of Notice of Appearance, etc. with affidavit of service annexed hereto as Exhibit B).

4. By said Notice and Demand plaintiff was directed to serve a complaint at the office of the Attorney General, 40 Garden Street, Poughkeepsie, New York.

5. By letter dated April 3, 1980, in an envelope dated April 3, 1980 by a Pitney-Bowes postage meter, I was served with a copy of said complaint. Said letter and complaint were received

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April 7, 1980, at my office at 40 Garden Street, Poughkeepsie, New York. (Exhibit C annexed).

6. Defendant's proposed Answer was prepared and served on April 30, 1980. (Exhibit D annexed).

7. On April 30, 1980, I received Notice of Settlement of proposed order of default and called plaintiff asking for an extension of time to serve or move. He refused.

8. On May 1, 1980, plaintiff rejected defendant's Answer and returned same. (Exhibit E annexed).

9. If Complaint was mailed on April 3, 1980, defendant was allowed 23 days for service of Answer.

10. The few day's delay occasioned here is inconsequential, especially in the face of four month's delay of plaintiff in serving the complaint to which my Answer responds. Such a delay in serving a complaint is enough to subject plaintiff to a dismissal pursuant to CPLR 3012(b).

11. It is the public policy of this State that actions be determined on their merit, and a grant of the default herein would negate that policy for an insubstantial delay.

12. The Courts, in their discretion, are empowered to expand a party's time to answer pursuant to CPLR 2004.

13. The Courts are empowered by CPLR 5015 to vacate defaults upon showing of reasonable excuse and merit.

14. Plaintiff's cause of action sounds in libel. Defendant is a Court of this State. The libel is alleged to have been published in a decision by defendant. It is well-settled law in this State that Courts are immune from suit for libel.

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15. In view of the above and other defenses asserted on behalf of defendant, I respectfully submit that defendant has meritorious defenses which should be heard.

16. Additionally, I would like to point out that plaintiff's basic cause of action has been dismissed in the Court of Claims and Federal Court.

17. In discussing the converse situation, in his commentaries on Article 30 of the Civil Practice Law and Rules, Section 3012:12, Professor Siegel does not even consider a matter of a few days delay in serving as a default requiring an Affidavit of Merit or Affidavit of Excuse.

WHEREFORE, defendant respectfully urges this Court to deny the application for default by plaintiff, direct plaintiff to accept service of defendant's proposed Answer or enlarge defendant's time to move or answer in response to the complaint, or to dismiss the complaint pursuant to CPLR 3012(b), or dismiss such complaint for failure to state a cause of action and that the Court lacks jurisdiction and for such other and further relief as to the Court may seem just and proper.

DATED: Poughkeepsie, New York  
May 8, 1980

s/ JOHN B. GARRITY, JR.

JOHN B. GARRITY, JR.