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JOHN B. GARRITY, JR.-FOR DEFENDANT-AFFIRMATION -JUNE 17, 1980

[A24- A27]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

GEORGE SASSOWER,

AFFIRMATION

Plaintiff,

-against-

INDEX NO. 1979/21226

APPELLATE DIVISION OF THE SUPREME COURT,
SECOND JUDICIAL DEPARTMENT,

Defendant.

I, JOHN B. GARRITY, JR., hereby affirm pursuant to CPLR 2106, that:

1. I am an Assistant Attorney General, of counsel to ROBERT ABRAMS, Attorney General of the State of New York, counsel for defendant, and have been assigned the defense of this action. I make this Affirmation in opposition to plaintiff's application for default judgment and to reiterate the substance of oral argument before the Hon. William Walsh, on May 20, 1980.

2. The defendant herein has been neither willful nor contumacious in default. The defendant immediately upon receipt of the bare summons commencing this action, forwarded same to the Solicitor General. The file was assigned to the New York City Office and reassigned to the Poughkeepsie Office. On December 6, 1980, I served and filed a Notice of Appearance and Demand for Complaint on the plaintiff, pro-se.

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3. In telephone conversations with Seth Corwin in November or December and later in April with Kent Thomas, both of the New York City Office, I was told there were extensive files regarding this matter and peripheral matters, which they would send me. I never received those files and have learned that since they are active and voluminous, the offer made to me was that I could have the opportunity to inspect them at the New York City Office -- not that they would be mailed.

4. In any event, from the time I served the Notice and Demand until April-1980, I heard nothing more from either the New York City Office or the plaintiff, pro-se.

5. On April 7 and April 11, the Poughkeepsie Office received copies of the complaint by mail. I was on trial in Poughkeepsie on April 8 and April 10. The complaints were not diaried for answer, as is the custom and practice in the office. Usually, the time to answer is noted at and 10th, 5th and 2nd days prior to the answer being due.

6. Because of the extreme delay in serving the complaint, my inadvertance due to involvement in two trials the week the complaints were received at the Poughkeepsie Office, and my failure to note or direct the diarying of the same, the defendant was delayed in answering the complaint herein by an incalculably brief period of time. (The time is incalculable by reason of plain iff's failure to offer any proof of service of the complaint and it is conceivable that it is merely a matter of hours.)

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WHEREFORE, defendant respectfully urges the Court to deny the application for default, 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
June 17, 1930

/s/ JOHN B. GARRITY, JR.

JOHN B. GARRITY, JR.