Resnick v Abelow
2016 NY Slip Op 32197(U)
October 26, 2016
Supreme Court, New York County
Docket Number: 654313/2015
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

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NIRIT RESNICK,

Plaintiff,

Index No. 654313/2015

-against-

DECISION and ORDER

Mot. Seq. 02

ROSS M. ABELOW and 1683 HOSPITALITY GROUP, INC.,

Defendants.

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HON. EILEEN A. RAKOWER, J.S.C.

Plaintiff commenced this action by filing a summons with notice on December 18, 2015. Plaintiff's summons with notice states that "[t]he nature of the claims asserted are: conversion, fraud, fraudulent inducement, breach of fiduciary duty, negligence, professional negligence (legal malpractice), unjust enrichment, violations of New York Debtor-Creditor Law and violations of the New York Judiciary Laws." It further states the relief sought is money damages in the amount of $586,000, together with interest, cost and attorneys' fees.

Plaintiff moves for default judgment against Defendants. Plaintiff's previous motion for default judgment was denied because the papers submitted by Plaintiff did not comply with the proof required by CPLR §3215(f) on such an application. Plaintiff's application was deficient because it did not contain proof of the claim by affidavit of the party. The only supporting affidavit submitted was by Plaintiff's counsel; however, a Verified Complaint was not served in this matter.

In connection with its pending application for default judgment, Plaintiff submits the affidavit of Nirit Resnick, the Plaintiff. As averred to in Resnick's affidavit, Resnick states that she retained defendant, Ross M. Abelow, in March 2014 to represent her in connection with custody disputes she was having with her

ex-husband over their son. Resnick states that "[i]n the early summer of 2015," Mr. Abelow "took [her] to lunch and said that [she] should invest in a restaurant," which Mr. Abelow represented would be "an offshoot of an established restaurant on the Upper East Side that was called Harlow." She states that Mr. Abelow asked her to invest $300,000.00, and while she was reluctant to do so at first, she "eventually instructed [her] accountants to transfer the requested investment ($300,000.00) to Mr. Abelow" on July 8, 2015. She states that Mr. Abelow had given "instructions to have the money wired to his attorney IOLA account." Resnick states that she was subsequently hospitalized, after she was left the hospital, she asked "Mr. Abelow on numerous occasions for information about [her] 'investment' in the restaurant, but it was never provided." She requested the return of her money, but Mr. Abelow did not respond to her texts.

Resnick states that in November 2015, Mr. Abelow was disbarred by the Appellate Division "pursuant to an affidavit in which he voluntarily resigned from the Bar and acknowledged that he could not defend himself against charges he had misappropriated several hundred thousand dollars of client funds from a real estate closing transaction (unrelated to his representation of [Resnick])." Resnick states that Mr. Abelow did not advise her of the disciplinary proceedings, and "while disciplinary proceedings against him were pending and subsequent to the effective date of his own disbarment, he was writing affidavits for [her] signature, and drafting his own affirmation, both of which he filed with the court in [her] child custody proceeding on November 17, 2015." Resnick states she has met "with the District Attorney's office (Financial Fraud unit) about Mr. Abelow's unauthorized practice of law and theft of [her] funds."

In addition to seeking a judgment against Mr. Abelow for $350,000, "representing the amount of the 'investment,' plus interest and costs, due to his fraud, fraudulent inducement, conversion of [her] money and breach of fiduciary duty," Resnick is also seeking a judgment in the amount of $236,000.00, which would represent the return of the legal fees she paid to Mr. Abelow. Resnick states that "Mr. Abelow never provided [her] with bills that described his legal services, only a statement of hours allegedly spent on [her] case" which "contain no descriptions of services rendered." Resnick states, "I believe that I was grossly overcharged by Mr. Abelow and that his services constituted malpractice, but for the purposes of this motion I am seeking to recover only the monies paid to him without any regard for the immense damages that I suffered from the monies paid

to him without any regard for the immense damages that I suffered as a result of his negligent lawyering and the loss of custody of my son."

Resnick is also asking for a judgment to be rendered in the amount of $586,000.000 against defendant, 1683 Hospitality Group, Inc., "a business associated with Mr. Abelow." As for the basis to hold 1683 Hospitality Group liable, Resnik states:

> I believe this business held the monies he defrauded me into giving him for 'investment' into the restaurant. I have been advised by my attorney that the corporate records for the New York Secretary of State reflect that this business has the same address as Mr. Abelow's address. A social media business site, Linkedin.com, had this business same [sic] associated with Mr. Abelow. I believe this entity received my money after it was paid to Mr. Abelow.

CPLR § 3215 provides, in relevant part: "On any application for judgment by default, the applicant shall file proof ... of the facts constituting the claim, the default and the amount due by affidavit made by the party." (CPLR § 3215[f]).

Defendants have not answered or otherwise responded to the complaint, or appeared in opposition to this motion. Plaintiff's motion for default judgment is granted as against Defendants on the issue of liability.

However, the statement of amounts due extend beyond funds issued for investment and legal fees and are not supported by Plaintiff's statements alone. Plaintiff must demonstrate her damages at an inquest.

Wherefore it is hereby,

ORDERED that Plaintiff's motion for a default judgment against Defendants is denied; and it is further

ORDERED that an assessment of damages against defendants ROSS M. ABELOW and 1683 HOSPITALITY GROUP, INC., is directed; and it is further

ORDERED that a copy of this order with notice of entry be served by the

movant upon the Clerk of the Trial Support Office (Room 158), who is directed, upon the filing of a note of issue and a statement of readiness and the payment of proper fees, if any, to place this action on the appropriate trial calendar for the assessment hereinabove directed.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: October 26, 2016

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EILEEN A. RAKOWER, J.S.C.