

Perez v Club Exit Inc.
2007 NY Slip Op 31859(U)
June 19, 2007
Supreme Court, New York County
Docket Number: 0103207/2007
Judge: Judith J. Gische
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **JUDITH J. GISCHE, J.S.C.**

PART _____

Index Number : 103207/2007

PEREZ, CHRISTIAN

vs

CLUB EXIT INC

Sequence Number : 001

DEFAULT JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...

Answering Affidavits -- Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this ~~motion~~

FILED

JUN 28 2007

NEW YORK
COUNTY CLERK'S OFFICE

**motion (s) and cross-motion(s)
decided in accordance with
the annexed decision/order
of even date.**

Dated: 6/19/07



J.S.C.
JUDITH J. GISCHE, J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10

-----X

CHRISTIAN PEREZ,

Plaintiff,

Decision/Order

Index No.: 103207/07
Seq. No. : 001

-against-

Present:
Hon. Judith J. Gische
J.S.C.

CLUB EXIT, INC. and NULIFE
ENTERTAINMENT, INC.,

Defendants.

-----X

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

FILED

JUN 28 2007

Numbered

Papers

Pltf's motion [d j/mt] w/BLS affirm in support, exhs 1

Upon the foregoing papers, the decision and order of the court is as follows:

This is a personal injury action. Plaintiff now moves, pursuant to CPLR § 3215, for an order directing the Clerk of Court to enter a default judgment in favor of plaintiff and against Nulife Entertainment, Inc. ("Nulife"), a foreign corporation. This motion is itself submitted to the court on default, though proof of service has been filed.

Discussion

On March 16, 2007, plaintiff served Nulife at 142 Newark Ave, Jersey City in New Jersey by personally delivering the summons and verified complaint to Edwin "Smith" ("Smith"). Smith refused to provide his last name and is identified by the process server as a managing agent. Plaintiff has complied with CPLR § 311.

Nulife has not appeared, or answered the complaint within the time provided

under the CPLR, nor obtained an order from the Court extending their time to do so. Accordingly, Nulife has defaulted in this action. Defendant Club Exit, Inc. has answered the complaint, but takes no position on the instant motion.

Plaintiff is entitled to a default judgment in its favor, provided he otherwise demonstrates that he has a *prima facie* cause of action. Gagen v. Kipany Productions Ltd., 289 A.D.2d 844 (3rd dept. 2001). While a default in answering the complaint constitutes an admission of the factual allegations therein and the reasonable inferences which may be made therefrom. [Rokina Optical Co., Inc. v. Camera King, Inc., 63 N.Y.2d 728 (1984)], plaintiff has failed to establish his *prima facie* cause of action under a theory of negligence.

Based on the verified complaint, plaintiff avers the following facts pertinent to this motion. Nulife rented the premises located at 610 West 56th Street from Club Exit, Inc. at 610 West 56th Street in Manhattan. On October, 2, 2004, plaintiff was assaulted and battered by security personnel employed by the defendants. While it is unclear to the court what theory of liability plaintiff proceeds under, he generally alleges that Nulife negligently hired, retained and supervised the unnamed security personnel.

Although the complaint is verified, this motion is supported only by the affirmation of counsel. The particular facts of the incident are not clear and the allegations are offered without any additional proof or statements based on personal knowledge. Accordingly, plaintiff has not factually established negligence or causation at this time.

Therefore, plaintiff's motion is granted only to the extent that Nulife's default in appearing is hereby noted. All issues regarding liability and damages are to be decided at an inquest which will be held at the time of trial.

This matter is hereby scheduled for a preliminary conference on **July 26, 2007** at 80 Centre Street, Room 122 at 9:30 a.m. All parties to this action are expected to appear at this time.

This shall constitute the decision and order of the Court.

Dated: New York, New York
June 19, 2007

So Ordered:



HON. JUDITH J. GISCHE, J.S.C.

FILED
JUN 28 2007
NEW YORK
COUNTY CLERKS OFFICE