

Zambrano v Bobola

2007 NY Slip Op 33550(U)

October 25, 2007

Supreme Court, New York County

Docket Number: 0105536/2006

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **JUDITH J. GISCHÉ, J.S.C.**

PART 10

Index Number : 105536/2006

ZAMBRANO, ILEANA

vs

BOBOLA, MELISSA

Sequence Number : 001

DEFAULT JUDGMENT

EX NO. _____

ION DATE _____

ION SEQ. NO. _____

ION CAL. NO. _____

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

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

FILED
NOV 01 2007
NEW YORK
COUNTY CLERK'S OFFICE

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

Dated: 10/26/07

JUDITH J. GISCHÉ, J.S.C. *J.S.C.*

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

-----x
ILEANA ZAMBRANO,

Plaintiff,

-against-

MELISSA BOBOLA and TEN'S CABARET,
INC., d/b/a ROCK CANDY,

Defendants.

-----x
MELISSA BOBOLA,

Third-Party Plaintiff,

-against-

KNIGHT SECURITY,

Third-Party Defendant.
-----x

Decision/Order

Index No.: 105536/06

Seq. No. : 001

Third-Party
Index No.: 5000

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

FILED
NOV 01 2007
COUNTY OF NEW YORK
CLERK'S OFFICE

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

Papers	Numbered
Pltf's motion [d j/mt] w/KF affirm, affid in support (MB), exhs 1

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

Defendant/third-party plaintiff Melissa Bobola ("Bobola") seeks entry of a default judgment against third-party defendant Knight Security ("Knight"). Plaintiff in the underlying action seeks to recover damages for personal injuries she allegedly sustained on June 3, 2005. Bobola now moves for a default judgment in its favor against Knight, only.

Bobola has filed proof of service of the summons and complaint on Knight.

[* 3]

Service was made on a person who claimed to be authorized to accept service on behalf of defendant Knight. This motion is itself submitted on default, although plaintiff has filed proof of service in the same manner as the summons and complaint. Plaintiff has also complied with the additional notice requirements of CPLR § 3215 [g] [4] [I], since Knight is a corporation. Though duly served, Knight has failed to answer the complaint within the time provided under the CPLR, appear or seek an order from the court extending its time to do so. Therefore, this motion is considered on default.

Bobola claims that Knight provided "security and crowd control" for defendant Ten's Cabaret, Inc. d/b/a Rock Candy (the "Club"), a night club where plaintiff Ileana Zambrano ("Zambrano") was allegedly injured. Bobola contends that Knight was "negligent in performing their security and crowd control services, and said negligence caused or contributed to the plaintiff's alleged damages." Bobola seeks common law indemnification from Knight if she is held liable for Zambrano's damages in the underlying action.

In support of this motion, Bobola has provided an affidavit. She states that she was at the Club, located in Manhattan, on June 3, 2005. She further claims that

"[t]he club was very crowded and difficult to maneuver once inside. While inside and walking thru the crowd I brushed up against plaintiff which then touched off a verbal confrontation. Plaintiff alleges I struck her with a glass which I vehemently deny. Plaintiff then filed a lawsuit for personal injuries sustained alleging negligence.

I subsequently learned that [Knight] provided security, bouncers and crowd control at the [club]."

A default in answering the complaint constitutes an admission of factual

allegations therein, and the reasonable inferences which may be made, therefore, [Rokina Optical Co. Inc. v. Camera King, Inc., 63 NY2d 728 (1984)]. Bobola is entitled to a default judgment in its favor, provided she demonstrates that she has a prima facie cause of action [Gagen v. Kipany Productions Ltd., 289 AD2d 844 (3rd dept. 2001)].

Bobola has pled a cause of action in tort against Knight based on its negligent performance of its services for the Club. Rahim v. Sottile Sec. Co., 32 A.D.3d 77 [2006]. However, on this motion she has not proven that Knight "provided security, bouncers and crowd control" to the club. Her own statement is not based on personal knowledge.

Accordingly, plaintiff's motion is granted only to the extent that Knight'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.

Any relief not expressly addressed herein has nonetheless been considered by the Court and is denied.

This shall constitute the decision and order of the Court.

Dated: New York, New York
October 25, 2007

So Ordered:



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

FILED
NOV 01 2007
NEW YORK
COUNTY CLERKS OFFICE