

Badillo v Hair Matics of Inwood, Inc.

2008 NY Slip Op 30105(U)

January 7, 2008

Supreme Court, New York County

Docket Number: 0105379/2007

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 10

Justice

Index Number : 105379/2007

BADILLO, EMILY

vs

HAIR MATICS OF INWOOD, INC.

Sequence Number : 001

DEFAULT JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

is 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

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

FILED
JAN 14 2008
NEW YORK
COUNTY CLERK'S OFFICE

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

Dated: 1/7/08

JUDITH J. GISCHE, 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

EMILY BADILLO,

Plaintiff,

-against-

HAIR MATICS OF INWOOD, INC.,

Defendant.
-----X

Decision/Order

Index No.: 105379/07

Seq. No. : 001

Present:

Hon. Judith J. Gische

J.S.C.

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/DWL affirm, EB affid, 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 defendant Hair Matics of Inwood, Inc. ("Hair Matics") on the issue of liability and setting this matter down for an inquest on the issue of damages. This motion is itself submitted to the court on default, though proof of service has been filed.

On May 1, 2007, plaintiff served the summons and verified complaint on Hair Matics by personally delivering the same to Tanisha Sanchez, known to the process server as managing agent and authorized to accept service of process. CPLR § 311.

Hair Matics has not appeared, or answered the complaint within the time provided under the CPLR, nor obtained an order from the Court extending its time to do so.

Accordingly, Hair Matics has defaulted in this action.

Plaintiff is entitled to a default judgment, provided she otherwise demonstrates that she has a *prima facie* cause of action. Gagen v. Kipany Productions Ltd., 289 A.D.2d 844 (3rd dept. 2001). 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)].

Based on the verified complaint and plaintiff's affidavit, plaintiff avers the following facts. On October 4, 2005, at defendant's beauty salon located at 4930 Broadway in Manhattan, plaintiff was seriously injured. Plaintiff went to defendant to "do a hair twisting and the defendant put the hair dryer/heater on an extremely high temperature which caused burns to her head and scalp."

Plaintiff has asserted two separate causes of action, to wit: negligence; and negligent breach of duty to abate a nuisance.

Plaintiff contends that Hair Matics was negligent in administering and controlling said hair dryer/heater and in failing to properly construct, maintain and repair said heater lamp. Plaintiff also alleges that Hair Matics failed to: [1] maintain the heater in a safe condition; [2] install a proper hair dryer/heater to minimize the occurrence of burns; [3] carefully use and monitor heating elements involved in the operation of its business; and [4] properly train and supervise its staff and employees on the use of the hair dryer/heater in question.

Plaintiff states that "as a result of this accident, [she] sustained burns on her head and scalp, including scarring." She claims to have a permanent bald spot, despite surgical treatment, and experienced pain and suffering and out-of-pocket expenses as a result of this accident.

Based on the foregoing, plaintiff has factually established negligence and causation. Accordingly, plaintiff is entitled to entry of a default judgment on the complaint on the issue of liability and this matter shall be set down for an inquest on the issue of damages. The inquest shall be before a Special Referee who shall hear and determine the amount plaintiff may recover from defendant Hair Matic of Inwood, Inc. Plaintiff shall serve a copy of this order on the Office of the Special Referee, 60 Centre Street, Room 119, so that this matter may be scheduled and assigned.

Conclusion

In accordance herewith, it is hereby:

ORDERED that plaintiff's for entry of a default judgment on the complaint against Hair Matic of Inwood, Inc. on the issue of liability is hereby granted; and it is further

ORDERED that there be an inquest before a Special Referee who shall hear and determine the amount plaintiff may recover for her damages from defendant Hair Matics of Inwood, Inc.. Plaintiff shall serve a copy of this order on the Office of the Special Referee, 60 Centre Street, Room 119, so that this matter may be scheduled and assigned.

Any requested 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
January 7, 2008

So Ordered:



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

FILED
JAN 14 2008
NEW YORK
COUNTY CLERKS OFFICE