

Eisenberg v City of New York
2014 NY Slip Op 30698(U)
March 18, 2014
Sup Ct, NY County
Docket Number: 153305/2013
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 5

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SUSAN EISENBERG,

Plaintiff,

-against-

DECISION/ORDER
Index No. 153305/2013
Seq. No. 002

THE CITY OF NEW YORK, PRIDE PROPERTY
MANAGEMENT CORP., PIERPONT
CONDOMINIUM and BH&B CONSTRUCTION CO.,

Defendants.

-----X
KATHRYN E. FREED, J.S.C:

RECITATION, AS REQUIRED BY CPLR2219(a), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION:

PAPERS	NUMBERED
NOTICE OF MOTION AND AFFIDAVITS ATTACHED.....	1-2(Exs. A-B)
ORDER TO SHOW CAUSE.....
ANSWERING AFFIDAVITS.....
REPLYING AFFIDAVITS.....
EXHIBITS.....
OTHER.....

UPON THE FORGOING CITED PAPERS, THIS DECISION/ORDER OF THE MOTION IS AS FOLLOWS:

In this personal injury action, plaintiff Susan Eisenberg seeks an Order, pursuant to CPLR 3215(a), directing that a default judgment be entered against defendant BH&B Construction Co. Or, in the alternative, scheduling an inquest based on the default. There is no opposition to the motion. After a review of the papers presented, all relevant statutes and case law, the Court **grants** the motion.

Factual and Procedural Background:

This action was commenced by plaintiff Susan Eisenberg against defendants the City of New York, Pride Property Management Corp., Pierpont Condominium, and BH&B Construction Co. (“BH&B”) by the filing of a summons and verified complaint on April 11, 2013. In her verified complaint, plaintiff alleges that she was injured on January 18, 2013 when she tripped and fell in the “sidewalk, roadway, and street area” in front of 111 East 30th Street in Manhattan. She claims that the incident occurred due to the negligence of the defendants. To date, defendant BH&B has failed to answer the complaint.

By notice of motion dated December 19, 2013, plaintiff brought the instant motion seeking a default judgment against the defendant pursuant to CPLR 3215(a). In the alternative, plaintiff seeks an inquest on damages as a result of BH&B’s default. In support of its motion, plaintiff submits an attorney affirmation, a copy of the summons and complaint, and the affidavit of service on BH&B. There has been no opposition to the motion.

Plaintiff’s Argument:

Plaintiff asserts that she is entitled to a default judgment against BH&B based on its willful and intentional failure to appear in this action.

Conclusions of Law:

CPLR 3215(a) provides, in pertinent part, that “[w]hen a defendant has failed to appear, plead or proceed to trial...., the plaintiff may seek a default judgment against him.” It is well settled that

“[o]n a motion for leave to enter a default judgment pursuant to CPLR 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party’s default in answering or appearing.” *See Atlantic Cas. Ins. Co. v. RJNJ Servs. Inc.*, 89 A.D.3d 649, 651 (2d Dept. 2011). Moreover, a default in answering the complaint is deemed to be an admission of all factual statements contained in the complaint and all reasonable inferences that flow from them. *See Woodson v. Mendon Leasing Corp.*, 100 N.Y.2d 63 (2003).

In the case at bar, plaintiff is entitled to a default against BH&B, having submitted a verified summons and complaint attesting to the facts constituting the claim, along with the affidavit of service relating thereto, and proof, in the form of an attorney’s affirmation, that the defendant has failed to answer the complaint. *See* CPLR 3215(f).

Therefore, in accordance with the foregoing, it is hereby:

ORDERED that the motion by plaintiff Susan Eisenberg for a default judgment against defendant BH&B Construction Co. is granted; and it is further,

ORDERED that the issue of damages against BH&B Construction Co. is reserved until the trial or other disposition of the action against the remaining defendants; and it is further,

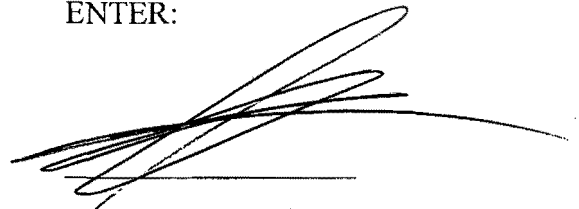
ORDERED that, upon disposition of the action against the remaining defendants, and after serving this Order with notice of entry upon all parties and the Clerk of the Trial Support Office at 60 Centre Street, Room 158, and serving and filing a note of issue accompanied by a certificate of readiness and any required fees, the Clerk shall then place this action on the calendar for an assessment of damages; and it is further,

ORDERED that this constitutes the decision and order of the Court.

DATED: March 18, 2014

MAR 18 2014

ENTER:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Hon. Kathryn E. Freed,
HON. I.S.C
JUSTICE OF SUPREME COURT