

Hamm v City of New York
2014 NY Slip Op 30755(U)
March 26, 2014
Sup Ct, NY County
Docket Number: 156631/2012
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 5

-----X
DELPHENIA HAMM,

Plaintiff,

-against-

DECISION/ORDER

Index No. 156631/2012

Seq. No. 002

THE CITY OF NEW YORK AND ABYSSINIAN
CULTURAL BUILDING CORP.,

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-C)
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 Delphenia Hamm seeks an Order, pursuant to CPLR 3215(a), directing that a default judgment be entered against defendant Abyssinian Cultural Building Corp. and, upon entry of such default, directing that an inquest be conducted 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 Delphenia Hamm against defendants the City of New York (“the City”) and Abyssinian Cultural Building Corp. (“ACBC”) by the filing of a summons and verified complaint on September 24, 2012. In her verified complaint, plaintiff alleges that she was injured on June 28, 2011 when she tripped and fell on a sidewalk on the southwest corner of Seventh Avenue (Adam Clayton Powell Jr. Blvd.) and West 135th Street in Manhattan. Plaintiff alleges that she fell adjacent to 2294 Adam Clayton Powell Jr. Blvd., a building owned by ACBC. She claims that the incident occurred due to the negligence of the City and ACBC in maintaining the sidewalk. To date, ACBC has failed to answer the complaint.

By notice of motion dated August 1, 2013, plaintiff brings the instant application seeking a default judgment against ACBC pursuant to CPLR 3215(a) and, upon the granting of a default, an inquest to determine the amount of damages owed by ACBC. In support of her motion, plaintiff submits an attorney affirmation, a copy of the summons and complaint, and the affidavit of service on ACBC. There is no opposition to the motion.

Plaintiff’s Argument:

Plaintiff asserts that she is entitled to a default judgment against ACBC based on its 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 ACBC, having submitted a summons and verified 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 Delphenia Hamm for a default judgment against defendant Abyssinian Cultural Building Corp. is granted; and it is further,

ORDERED that the issue of damages against defendant Abyssinian Cultural Building Corp. is reserved until the trial or other disposition of the action against the co-defendant City of New York; and it is further,

ORDERED that, upon disposition of the action against the co-defendant City of New York, 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

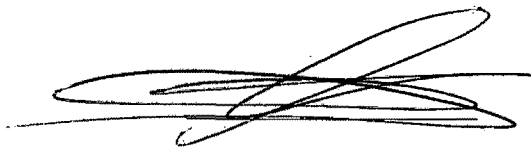
for an assessment of damages; and it is further,

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

DATED: March 26, 2014

ENTER:

MAR 26 2014

A handwritten signature in black ink, appearing to read 'Kathryn E. Freed', written over a horizontal line.

Hon. Kathryn E. Freed,
J.S.C.
HON. KATHRYN FREED
JUSTICE OF SUPREME COURT