

Roman v 1781 Riverside, LLC
2016 NY Slip Op 32381(U)
December 2, 2016
Supreme Court, New York County
Docket Number: 162467/14
Judge: Kathryn E. Freed
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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 2

-----X
MICHAEL ROMAN,

Plaintiff,

-against-

DECISION AND ORDER

Index No. 162467/14

Mot. Seq. No. 001

1781 RIVERSIDE, LLC and FOUR BROTHERS
GENERAL CONTRACTORS AND DEVELOPMENT, INC.,

Defendants.

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

RECITATION, AS REQUIRED BY CPLR 2219 (a), OF THE PAPERS CONSIDERED IN THE REVIEW OF
THIS MOTION.

PAPERS

NUMBERED

NOTICE OF MOTION AND AFFIDAVITS ANNEXED

1-3 (Exs. A-C)

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE MOTION IS AS FOLLOWS:

In this personal injury action, plaintiff moves for a default judgment against defendant Four Brothers General Contractors and Development, Inc. based on its failure to answer the complaint or otherwise appear in this matter, along with such other relief as this Court deems just and proper. Upon a review of the papers submitted and the relevant statutes and case law, the motion, which is unopposed, is **granted**.

FACTUAL AND PROCEDURAL BACKGROUND:

Plaintiff Michael Roman alleges that, on May 2, 2015, he was injured when he fell at premises owned by defendant 1781 Riverside LLC, where defendant Four Brothers General Contractors and Development, Inc. ("Four Brothers") was a general contractor engaged in a

construction project.

This action was commenced by plaintiff's filing of a summons and verified complaint against defendants on April 21, 2016. Ex. A.¹ 1781 Riverside LLC was served with process on April 28, 2016 (NYSCEF Doc. No. 2). The same day, Four Brothers was served with two copies of the summons and complaint via the Secretary of State pursuant to Business Corporation Law ("BCL") section 306. Ex. B. 1781 Riverside LLC joined issue on or about June 21, 2016. NYSCEF Doc. No. 4. Plaintiff served Four Brothers with additional copies of the summons and complaint on July 26, 2016. Ex. C; Tomanio Aff., at par. 6.

Plaintiff now moves for a default judgment against Four Brothers on the ground that it has failed to appear or otherwise answer in this action. In support of the motion, plaintiff submits an affidavit executed by plaintiff, the summons and complaint, an affidavit of service of the summons and complaint, and an attorney affirmation in which counsel for plaintiff represents that a subsequent mailing of the summons and complaint was made on Four Brothers on July 26, 2015 and that the said defendant has not answered or otherwise appeared in this action.

POSITIONS OF THE PARTIES:

Plaintiff argues that it is entitled to a default judgment against Four Brothers since that entity was properly served via the Secretary of State on April 29, 2015, plaintiff's affidavit of merit establishes a meritorious claim against that entity, and counsel's affirmation establishes that the said defendant failed to answer the complaint.

¹Unless otherwise noted, all references are to the affirmation of Sara I. Tomanio, Esq. submitted in support of the motion.

LEGAL CONCLUSIONS:

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.” *Atlantic Cas. Ins. Co. v RJNJ Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011). Proof of the facts constituting the claim may be provided by plaintiff’s affidavit. *See* CPLR 3215(f). Where, as here, a verified complaint has been served, it may be used as the affidavit of facts constituting the claim and, in such case, the affidavit of default may be made by the party or the party’s attorney. *Id.* 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 NY2d 63 (2003).

Plaintiff correctly asserts that he is entitled to a default judgment against Four Brothers. Four Brothers was timely and properly served pursuant to BCL 306 on April 28, 2015. Ex. K. That section allows for service of process to be made on a corporation by delivering duplicate copies of the summons and complaint to the Secretary of State or a person authorized to accept service on his or her behalf. A follow up mailing of the summons and complaint to Four Brothers was made on July 26, 2016 (Ex. C; Tomanio Aff., at par. 6), thus satisfying CPLR 3215(g)(4)(i). The verified summons and complaint (Ex. A) and the affidavit of plaintiff submitted in support of the motion set forth the facts giving rise to the claim. Finally, the affirmation of plaintiff’s counsel establishes that Four Brothers failed to answer or otherwise appear in this matter.

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

ORDERED that the motion by plaintiff Michael Roman motion seeking a default judgment against defendant Four Brothers General Contractors and Development, Inc. is granted; and it is further,

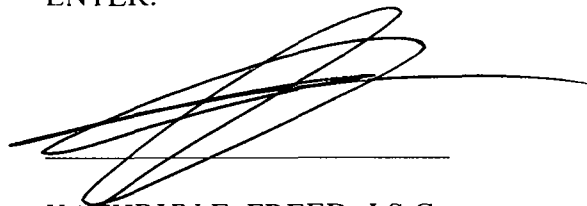
ORDERED that, following the filing of the note of issue, this matter is to be set down for an inquest in favor of plaintiff Michael Roman, assessing damages against defendant Four Brothers General Contractors and Development, Inc., with said inquest and assessment of damages to take place at the time of trial, or other disposition, of the remaining portion of the action; and it is further,

ORDERED that plaintiff shall serve a copy of this order on all parties, including defendant Four Brothers General Contractors and Development, Inc., and the Trial Support Office at 60 Centre Street, Room 158; and it is further,

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

Dated: December 2, 2016

ENTER:

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

KATHRYN E. FREED, J.S.C.

**HON. KATHRYN FREED
JUSTICE OF SUPREME COURT**