

Anderson v M.S.S. Constr. Corp.

2017 NY Slip Op 32884(U)

July 7, 2017

Supreme Court, Bronx County

Docket Number: 20358/2015E

Judge: Doris M. Gonzalez

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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MICHAEL ANDERSON,

Plaintiff,

Index No. 20358/2015E

v.

DECISION AND ORDER

M.S.S. CONSTRUCTION CORP., M.S.S.
CONTRACTING, CORP., M.S.S. SIDEWALK
BRIDGING & SCAFFOLDING CORP., PRABHJIT
SINGH d/b/a M.S.S. CONSTRUCTION CORP., MANJIT
SINGH d/b/a M.S.S. CONSTRUCTION CORP., RJP
ELECTRIC CORP., DANCO, INC., and S&S
ARCHITECTURAL DESIGN LLC,

Defendants.
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Recitation, as required by CPLR§2219[a], of the papers considered in the review of this motion:

Papers	Numbered
<u>Notice of Motion and Affirmation</u>	1, 2
<u>Affirmation in Partial Opposition</u>	3
<u>Affirmation in Partial Opposition</u>	4

The plaintiff moves by Notice of Motion, dated June 23, 2016, for leave to renew and re-argue the Decision and Order of this Court, dated May 16, 2016, pursuant to CPLR Rule 2221(e), or in the alternative, for an order: i) pursuant to CPLR§ 3215(a) directing entry of judgment in favor of the plaintiff and against the defendants MSS Construction Corp., MSS Contracting Corp., MSS Sidewalk Bridging & Scaffolding Corp., Prabhjit Singh d/b/a MSS Construction Corp., Manjit Singh d/b/a MSS Construction Corp., and RPJ Electric Corp.; and ii) for such other and further relief as this Court may deem just and proper.

The defendant S&S Architectural Design, LLC partially opposes the motion, by Keith R. M. Roussel, Esq., Attorneys for the defendant, by Affirmation in Partial Opposition dated

September 9, 2016. The defendant Danco, Inc. partially opposes the motion, by Crystal E. Nagy, Esq., Attorneys for the defendant, by Affirmation dated September 13, 2016.

FACTUAL BACKGROUND

It is alleged that on February 16, 2012, the plaintiff while working fell from a scaffold at the residential premises located at 65-26 Parsons Blvd., in the County of Queens, City and State of New York. It is alleged that as a result of said fall the plaintiff sustained multiple injuries.

PROCEDURAL HISTORY

The plaintiff moved by Notice of Motion, dated April 11, 2016, for an order directing judgment in favor of the plaintiff as against the defendants MSS Construction Corp., MSS Contracting Corp., MSS Sidewalk Bridging & Scaffolding Corp., Prabhjit Singh d/b/a MSS Construction Corp., Manjit Singh d/b/a MSS Construction Corp., and RPJ Electric Corp. since the defendants failed to answer to the complaint. By order, dated May 16, 2016, the plaintiff's motion was denied. The movant failed to show by its affidavit of service that all documents were served upon the appropriate parties as directed by the Court.

DISCUSSION OF LAW

By Order, dated May 16, 2016, this Court found that the affidavit of service submitted was deficient since it stated that only the notice of motion underlying was served upon the defendants and silent on the affirmation in support or the attached exhibits. In support of the instant motion the plaintiff submits a corrected affidavit of service showing that the underlying notice of motion, the affirmation in support and the exhibits were all served upon defendants.

It is well settled that pursuant to CPLR§ 3215 (a),(c) a plaintiff is entitled to take a default judgment against a defendant that fails to answer within one year after the default occurs, CPLR§ 3215 (f) requires an applicant for a default judgment to file; “proof of service of the summons and the complaint...proof of the facts constituting the claim...” and proof of the default.

It is undisputed that said defendants did not answer to plaintiff’s complaint. The plaintiff has attached an affidavit of service showing that he served the defendants MSS Construction Corp., MSS Contracting Corp., MSS Sidewalk Bridging & Scaffolding Corp., Prabhjit Singh d/b/a MSS Construction Corp., Manjit Singh d/b/a MSS Construction Corp., and RPJ Electric Corp with the Summons and Complaint. The plaintiff has also submitted an affidavit of merit as “proof of the facts constituting the claim.”

The defendants S&S Architectural Design, LLC and Danco, Inc. in partial opposition argue that the inquest on damages should be held during or after the trial, pursuant to CPLR§ 3215 (d). They object to an immediate Inquest against the co-defendants.

Based on the record before the Court the plaintiff has shown that the Court should renew the motion to enter a default against the defendants since an amended affidavit of service has been provided for the Court’s consideration, showing all the appropriate documents were served upon the defendants. Moreover, the movant also has shown his entitlement to a default judgment as against the defaulting defendants.

ACCORDINGLY, after consideration of the foregoing, the applicable law, a review of the Court file, and due deliberation; it is hereby

ORDERED, the plaintiff’s motion for leave to renew is GRANTED; and it is further

FILED: BRONX COUNTY CLERK 07/13/2017 12:41 PM

NYSCEF DOC. NO. 87

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ORDERED, that a default judgment is granted against the defendants MSS Construction Corp., MSS Contracting Corp., MSS Sidewalk Bridging & Scaffolding Corp., Prabhjit Singh d/b/a MSS Construction Corp., Manjit Singh d/b/a MSS Construction Corp., and RPJ Electric Corp.; and it is further

ORDERED, the trial on the issue of damages against the defaulting defendants MSS Construction Corp., MSS Contracting Corp., MSS Sidewalk Bridging & Scaffolding Corp., Prabhjit Singh d/b/a MSS Construction Corp., Manjit Singh d/b/a MSS Construction Corp., and RPJ Electric Corp. shall be held at the same time of the trial against defendants S&S Architectural Design, LLC and Danco, Inc..

This constitutes the Decision and Order of the Court.

Dated: July 7, 2017
Bronx, New York

ENTER:



HON. DORIS M. GONZALEZ, J.S.C.