

Gil v City of New York
2018 NY Slip Op 30671(U)
April 12, 2018
Supreme Court, New York County
Docket Number: 158267/2015
Judge: Kathryn E. Freed
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. KATHRYN E. FREED

PART 2

Justice

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CLARITZA GIL,

INDEX NO. 158267/2015

Plaintiff,

- v -

THE CITY OF NEW YORK, 700 WEST 180TH STREET
ASSOCIATES, INC., LIBBY MANAGEMENT SERVICES CORP
D/B/A STELLAR MANAGEMENT, FRESH EXPRESS DELI,

MOTION SEQ. NO. 004

Defendant.

DECISION AND ORDER

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700 WEST 180th STREET ASSOCIATES, INC. and LIBBY
MANAGEMENT SERVICES CORP. d/b/a STELLAR MANAGEMENT,

Third-Party Plaintiffs,

- v -

ADNAN ISMAIL, ALI SAIED, ADNAN ISMAIL and
ALI SAIED d/b/a CEDAR JUICE BAR and
BROADWAY SALAD AND JUICE CENTER, INC.,

Third-Party Defendants.

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The following e-filed documents, listed by NYSCEF document number 53, 54, 55, 56, 57, 58, 59, 60,
61

were read on this motion to/for

JUDGMENT - DEFAULT

Upon the foregoing documents, it is ordered that the motion is denied with
leave to renew upon proper papers.

Third-Party Plaintiffs, 700 West 180th Street Associates, Inc. and Libby
Management Services Corp. d/b/a Stellar Management, (hereinafter collectively
“700 Assocs.”) move, pursuant to CPLR 3215, for an Order granting them a
default judgment against Third-Party Defendants Adnan Ismail, Ali Saied, Adnan

Ismail and Ali Saied d/b/a Cedar Juice Bar and Broadway Salad and Juice Center, Inc. (“ Juice Bar Defendants”). The motion is unopposed.

The underlying First-Party action was commenced on or about August 10, 2015 by service of a Summons and Complaint (Docs. No. 1 and 55)¹ by First-Party Plaintiff Claritza Gil (“Gil”), for personal injuries allegedly she allegedly incurred on the sidewalk at or near the front of the easterly boundary of a building located at and known as 700 West 180th Street in Manhattan. The incident occurred in front of a store known at that location known as Fresh Express, the address of which was 4233 Broadway, New York, New York. Gil alleges she was injured due to the negligence of First-Party Defendants 700 West 180th Street Associates, Inc. and Libby Management Services Corp. d/b/a Stellar Management.² Issue was joined by First-Party Defendants 700 Assocs., on or about March 8, 2016. Docs. No. 3 and 56.

On or about April 12, 2017, 700 Assocs. filed a Third-Party Complaint against Third Party Juice Bar Defendants. Doc. 58. In the Third-Party Action, 700 Assocs. sued the Juice Bar defendants alleging that the parties had entered into a

¹ All references are to the documents filed with NYSCEF in connection with this matter.

² The City of New York was dismissed as a party to this action by Order of J. Perry, dated June 22, 2017.

lease agreement pursuant to which the Juice Bar defendants agreed to defend, indemnify and hold 700 Assocs. harmless from any and all claims or suits for damages for personal injuries, property damage and/or wrongful death arising out of the leased premises and areas adjacent thereto. They further allege that the agreement was in full force and effect on the date of Gil's alleged accident and that, therefore, the Third-Party Defendants will be liable to 700 Assocs., for any portion of the damages, if any, which for which the Third-Party Plaintiffs will be responsible, including costs disbursements and attorneys' fees.

Third-Party Plaintiffs 700 Assocs. now move, pursuant to CPLR 3215, for an order granting them a default judgment against the Third-Party Juice Bar Defendants. 700 Assocs., through their attorney, Annie Cha, Esq., a member of the law firm of Braff, Harris, Sukoneck & Maloof, affirms that the Third-Party Summons and Complaint were properly served on the Third-Party Juice Bar Defendants. (Doc. No 59) and that the time for the Juice Bar defendants to answer has expired without them answering or otherwise moving in any manner with respect to said complaint. Cha further avers that, pursuant to CPLR 3215 (g) (4) (i), a letter was sent to all Juice Bar Defendants informing them of the Motion for a Default, along with a copies of the Default Motion and an additional copies of the complaint, which were duly mailed to the individual defendants' last known

addresses and served on Broadway Salad and Juice Center, Inc. at its place of business at 4233 Broadway, New York, New York. Docs. No 60 and 61.

The Third-Party Complaint was verified by a principal of the 700 West 180th Street Associates, Larry Gluck, who averred that the material allegations set forth in the Complaint were “true to my own knowledge.” Docs. No. 41 and 58.

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).

This Court notes that, although the motion contains a verified complaint, sworn to by Gluck, this, alone, is insufficient to establish the Third-Party Plaintiffs’ entitlement to a default judgment against the Third-Party Defendants insofar as they have failed to append to their motion a copy of the lease agreement which they allege the parties have entered into. Thus, plaintiff has failed to submit

sufficient "proof of the facts constituting the claim." CPLR 3215(f); *see Manhattan Telecom. Corp. v H & A Locksmith, Inc.*, 21 NY3d 200, 202 (2013).

In light of the foregoing, it is hereby:

ORDERED that plaintiff's motion is denied, with leave to renew upon proper papers; and it is further,

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

4/12/2018
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	DO NOT POST	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE