

Basilio v Carlo Lizza & Sons Paving, Inc.
2018 NY Slip Op 31211(U)
June 14, 2018
Supreme Court, New York County
Docket Number: 159724/2017
Judge: Kathryn E. Freed
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and Consolidated Edison, Inc. (“Con Ed”) on or about October 31, 2017. (Doc. No. 1).¹ Service was effectuated on Lizza via the Secretary of State on January 22, 2018. (Doc. No. 7). The Affidavit of Merit setting forth the facts of the accident was sworn to by plaintiff on or about February 16, 2018. (Doc No. 13). A default letter pursuant to CPLR 3215 containing a copy of the summons and complaint, dated January 11, 2018, was served on Lizza at 42 Yellow Core Road, Syosset, New York (Doc. No. 17). A copy of plaintiff’s Motion for a Default, along with an attorney’s Affirmation and the Affidavit of Merit, was served on Lizza on February 22, 2018. (Doc. No. 18). Plaintiff’s counsel now affirms that defendant Lizza has failed to appear in the instant motion and, pursuant to CPLR 3215 (a) and (b), prays that a default judgment be entered against Lizza (Doc. No. 12).² Annexed to the instant motion are copies of permits from the New York City Department of Transportation (Doc No. 14), which indicate that defendant Lizza was granted permission to do roadway construction at the subject intersection.

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

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

² Con Ed filed an answer to the complaint on December 4, 2017. Doc. 3.

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).

Plaintiff has therefore established the facts constituting the claim and plaintiff is entitled to a default judgment against Lizza.

In light of the foregoing, it is hereby:

ORDERED that the motion by plaintiff Marbin Urena Basilio seeking a default judgment against defendant, Carlo Lizza & Sons Paving, 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 Marbin Urena Basilio assessing damages against defendant, Carlo Lizza & Sons Paving, 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 Marbin Urena Basilio shall serve a copy of this order on all parties to this action, and on the Trial Support Office at 60 Centre Street, Room 158; and it is further,

ORDERED that this constitutes the decision of the court.

<u>6/14/2018</u>					
DATE				KATHRYN E. FREED, J.S.C.	
CHECK ONE:	☐	CASE DISPOSED	☒	NON-FINAL DISPOSITION	
	☒	GRANTED	☐	GRANTED IN PART	☐ OTHER
APPLICATION:	☐	SETTLE ORDER	☐	SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN	☐	FIDUCIARY APPOINTMENT	☐ REFERENCE