

Aspen Am. Ins. Co. v 310 Apt. Corp.

2018 NY Slip Op 32566(U)

April 18, 2018

Supreme Court, New York County

Docket Number: 152951/2017

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
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED
Justice

PART 2

-----X

ASPEN AMERICAN INSURANCE COMPANY, as subrogee of
308 W. 106 Owners Inc.,

INDEX NO. 152951/2017

Plaintiff,

- v -

MOTION SEQ. NO. 001

310 APARTMENT CORPORATION and HERON, LTD.,

Defendants.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 5, 6, 7, 8, 9, 10, 11, 12, 13, 14
were read on this motion to/for DEFAULT JUDGMENT

Upon the foregoing documents, it is ordered that the motion is granted to the extent indicated
below.

In this subrogation action, plaintiff Aspen American Insurance Company, as subrogee of
308 W. 106 Owners Inc. (308 W. 106), seeks a default judgment against defendant Heron, Ltd.
(Heron). The motion, which is unopposed, is granted to the extent indicated below.

On or about February 26, 2016, the premises located at 308 West 106th Street, New York,
New York "sustained severe damage" as a result of alleged negligence by defendants 310
Apartment Corporation (310 Apt. Corp.) and Heron, the owner and managing agent of the adjacent
premises, respectively. Doc. 1, at pars. 4-8. Plaintiff claims that, as a result of the damage, 308
W. 106 sustained a loss "exceeding the sum of \$144,480.97." Id., at par. 18. As of February 26,
2016, 308 W. 106 was insured by plaintiff, which reimbursed it for the loss.

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By summons and complaint filed March 29, 2017, plaintiff commenced this subrogation action to recover from 310 Apt. Corp. and Heron the monies it paid to 308 W. 106. Doc. 1. 310 Apt. Corp. and Heron were served via the Secretary of State on April 3, 2017. Docs. 2 and 3. 310 Apt. Corp. joined issue by service of its verified answer filed June 21, 2017. Doc. 4.

On November 1, 2017, plaintiff filed the instant motion seeking a default judgment against Heron. Doc. 5. In support of the motion, which is unopposed, plaintiff submits, inter alia, an attorney affirmation attesting, among other things, to the fact that Heron failed to answer or otherwise appear in this matter; the summons and complaint; the affidavit of service on Heron; and the affidavit of Kefira Yisrael, a Recovery Specialist at Brownstone Agency, an authorized representative of plaintiff. Doc. 11. In her affidavit, Yisrael avers that plaintiff reimbursed 308 W. 106 for the loss in the amount of \$154,150.17 and is entitled to recover that amount from Heron. Id. She further represents that Heron owes plaintiff costs, expenses, and attorneys' fees. Id.

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." On a motion for a default judgment under CPLR 3215 based upon a failure to answer the complaint, a plaintiff demonstrates entitlement to a default judgment against a defendant by submitting: (1) proof of service of the summons and complaint, (2) proof of the facts constituting its claim, and (3) proof of the defendant's default in answering or appearing. *See* CPLR 3215 (f); *Loughran v Giannoti*, ___ AD3d ___ (2d Dept April 11, 2018); *Gantt v North Shore-LIJ Health Sys.*, 140 AD3d 418 (1st Dept 2016).

The affidavit of service submitted by plaintiff establishes that Heron was properly served via the Secretary of State. The affirmation of plaintiff's attorney establishes that Heron failed to answer or otherwise appear in this action. The affidavit of Yisrael establishes that Heron is indebted to plaintiff in the sum of \$154,150.17. Therefore, plaintiff is entitled to a default judgment against Heron in this amount, plus costs and disbursements, as well as interest from February 26, 2016.¹

Therefore, in light of the foregoing, it is hereby:

ORDERED that the motion by plaintiff Aspen American Insurance Company, as subrogee of 308 W. 106 Owners Inc., for a default judgment against defendant Heron, Ltd. is granted, and the Clerk is directed to enter judgment in favor of said plaintiff and against said defendant in the amount of \$154,150.17, plus costs and disbursements to be taxed by the Clerk, as well as 9% statutory prejudgment interest from February 26, 2016 until the date of entry of judgment; and it is further


ORDERED that such judgment is hereby severed and the action shall continue against the remaining defendant; and it is further

¹ Although Yisrael contends that plaintiff is owed attorneys' fees by Heron, she provides no explanation or substantiation of this claim.

ORDERED that the remaining parties to this action are to appear for a preliminary conference on July 24, 2018 at 80 Centre Street, Room 280, at 2:30 p.m.; and it is further

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

4/18/2018
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input checked="" 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"/>	REFERENCE
	<input type="checkbox"/>	DO NOT POST	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	