

Scharf v Grange Assoc., LLC
2019 NY Slip Op 30025(U)
January 3, 2019
Supreme Court, New York County
Docket Number: 157025/2017
Judge: Kathryn E. Freed
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
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 PART IAS MOTION 2

Justice

-----X INDEX NO. 157025/2017

ARNOLD SCHARF,

Plaintiff,

MOTION SEQ. NO. 002

- v -

GRANGE ASSOCIATES, LLC, GATSBY ENTERPRISES, LLC,
ASHRAF CORP., MARK J. HELLER PERSONAL RESIDENCE
TRUST BY PETER TOUMBEEKIS, TRUSTEE, BHAGHIANA
GENERAL CONSTRUCTION, INC., BHAGHIANA, INC.,

DECISION AND ORDER

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 45, 46, 47, 48, 49, 50, 51, 52

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, it is Ordered that the within motion is granted without opposition.

The underlying action was brought to recover damages for personal injuries alleged to have been sustained by plaintiff, Arnold Scharf, on or about April 22, 2017 while walking on the sidewalk between and adjacent to the premises located at 61 East 66th Street, New York, and 59 East 66th Street, New York, NY. The accident allegedly happened when plaintiff was caused to fall due to defective and dangerous conditions negligently permitted to exist by defendants, which danger was exacerbated by the structure created and erected by defendants Bhaghiana General Construction, Inc. and Bhaghiana, Inc. (hereinafter collectively

“Bhaghiana”) and which structure occluded the defect and obstructed and encroached upon the sidewalk, causing plaintiff’s injury.

The underlying action was commenced by the filing of a summons and verified complaint as against defendants GRANGE ASSOCIATES, LLC, GATSBY ENTERPRISES, LLC, ASHRAF CORP., and MARK J. HELLER PERSONAL RESIDENCE TRUST BY PETER TOUMBEEKIS, TRUSTEE on or about August 4, 2017. (Doc. No. 1).¹ Issue was joined with defendants GRANGE ASSOCIATES, LLC, and GATSBY ENTERPRISES, LLC, on October 23, 2017 and by ASHRAF CORP., on November 9, 2017. Upon learning from defendant ASHRAF CORP., that the shed on the subject site was erected by Bhaghiana, plaintiff moved to amend the summons and complaint to include Bhaghiana in this action. This motion was granted by this Court, in its order of April 4, 2018. Doc. No. 50.

Plaintiff, by his attorney, Katherine G. Howells, an associate of the law firm of Goidel & Siegel, LLP., avers that Bhaghiana was served with an amended summons and complaint on April 30, 2018 and that copies of the affidavits of service are appended to the instant motion. Doc. No. 51. Howells further avers

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

that more than thirty days have elapsed since Bhaghiana was served and that it has failed to file an answer or respond in any way. Further, Howells avers that, in compliance with CPLR 3215, plaintiff mailed an additional copy of the amended summons and complaint to Bhaghiana accompanied by copies of the Court's order allowing the amendment of said summons and complaint to include Bhaghiana, and with notice of Bhaghiana's impending default in the action should they fail to respond. Doc. No. 52.

An Affidavit of Merit by plaintiff Arnold Scharf, setting forth the facts of the accident, is appended to the within motion and was sworn to by plaintiff on or about September 27, 2018. Doc. No. 48.

Plaintiff's counsel now affirms that defendants Bhaghiana General Construction, Inc. and Bhaghiana, Inc. have failed to appear in the instant motion and, pursuant to CPLR 3215 (a) and (b), prays that a default judgment be entered against defendants Bhaghiana General Construction, Inc., and Bhaghiana, Inc. (Doc. No. 146).

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).

Plaintiff has therefore established the facts constituting the claim and plaintiff is entitled to a default judgment against defendants Bhaghiana General Construction, Inc., and Bhaghiana, Inc.

In light of the foregoing, it is hereby:

ORDERED that the motion by plaintiff Arnold Scharf, seeking a default judgment against defendants Bhaghiana General Construction, Inc., and Bhaghiana, 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 Arnold Scharf, assessing damages against defendants Bhaghiana General Construction, Inc. and Bhaghiana, 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 Arnold Scharf 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.

1/3/2019

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

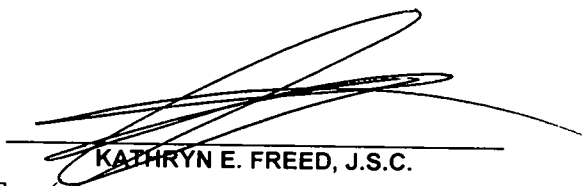
SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE


KATHRYN E. FREED, J.S.C.