

| |
|--|
| Munoz v CRP Clarendon A LLC |
| 2019 NY Slip Op 30499(U) |
| February 26, 2019 |
| Supreme Court, New York County |
| Docket Number: 159668/2016 |
| 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 2EFM

Justice

-----X
INDEX NO. 159668/2016
MOTION DATE N/A
MOTION SEQ. NO. 003

GISELA MUNOZ,

Plaintiff,

- v -

CRP CLARENDON A LLC, formerly known as CRP UPTOWN
PORTFOLIO II LLC and 2108 DELI GROCERY INC.,

Defendants.

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 003) 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 43, 44, 45, 46, 47, 48, 49, 50, 51

were read on this motion to/for DEFAULT JUDGMENT

Upon the foregoing documents, it is ordered that the motions are decided as follows.

In this action to recover damages for personal injury, plaintiff Gisela Munoz moves (motion sequence 001), pursuant to CPLR 3215, for a default judgment against defendant 2108 Deli Grocery Inc. ("2108"). Defendant CRP Clarendon A LLC formerly known as CRP Uptown Portfolio II LLC ("CRP") moves (motion sequence 003), pursuant to CPLR 3215, for a default judgment on its cross claims against 2108. After a review of the motion papers, as well as a review of the relevant statutes and case law, the applications are decided as follows.

Plaintiff commenced the captioned action against defendants by filing a summons and verified complaint on November 17, 2016. Doc. 1. The summons and complaint were served on defendants on December 13, 2016. Docs. 2 and 3. CRP joined issue by its verified answer filed and served March 16, 2017. Docs. 4 and 5. In its answer, CRP asserted cross claims against 2108 for contribution and common-law and contractual indemnification. Doc. 4.

On September 18, 2017, plaintiff moved (motion sequence 001), pursuant to CPLR 3215, seeking a default judgment against 2108. Doc. 7. In support of the motion, which is unopposed, plaintiffs submitted, inter alia, an attorney affirmation, the verified complaint, and the affidavits of service. CRP subsequently moved on October 27, 2017 (motion sequence 002) for a default judgment on its cross claims against 2108, as well as to compel plaintiff to produce discovery. Doc. 16. Although CRP's motion was withdrawn by stipulation filed December 19, 2017 (Doc. 27), it moved for a default against 2108 once again on September 27, 2018 (motion sequence 003). Doc. 28. In motion sequence 003, CRP also sought to impose discovery sanctions on plaintiff or, in the alternative, to compel plaintiff to provide outstanding discovery. Doc. 28. The discovery issues between plaintiff and CRP which were raised in connection with motion sequence 003 were resolved at a preliminary conference on February 26, 2019, leaving unresolved only plaintiff's motion for default (motion sequence 001) and that branch of CRP's motion (motion sequence 003) seeking a default against 2108 on its cross claims.

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). Moreover, a default in answering the complaint is deemed to be an admission of all factual statements contained in the complaint and all reasonable inferences that flow from them. *See Woodson v. Mendon Leasing Corp.*, 100 N.Y.2d 63 (2003).

Plaintiff has met each of the foregoing requirements. He submits an affidavit of service establishing that the summons and verified complaint were properly served on 2108. In an affirmation in support of the motion, plaintiff's counsel represents that defendant failed to answer the complaint. Additionally, the verified complaint sets forth the facts constituting the claim. *See Beltre v Babu*, 32 AD3d 722, 723 (1st Dept 2006). Plaintiff is thus entitled to a default judgment against 2108.

However, that branch of CRP's motion seeking a default against 2108 is denied with leave to renew upon proper papers. In support of its motion, 2108 submits, inter alia, proof of service of its answer setting forth its cross claims (Doc. 32), an attorney affirmation attesting to the default (Doc. 30), and the affidavit of Rick Serrapica, Chief Operating Officer of CRP, purporting to set forth the facts constituting the claim. Doc. 35. Serrapica represents that, according to a lease between CRP, as landlord, and 2108, as tenant, 2108 is entitled to indemnification, as well as attorneys' fees, from 2108. Doc. 35 at pars. 6-7. However, the lease, which Serrapica maintains is an exhibit to his affidavit, is not annexed to the motion.

Therefore, in accordance with the foregoing, it is hereby:

ORDERED that the motion by plaintiff Gisela Munoz (motion sequence 001), pursuant to CPLR 3215, for a default judgment against defendant 2108 Deli Grocery Inc., is granted; and it is further

ORDERED that the motion by defendant CRP Clarendon A LLC formerly known as CRP Uptown Portfolio II LLC (motion sequence 003), pursuant to CPLR 3215, for a default judgment against defendant 2108 Deli Grocery Inc. is denied with leave to renew upon proper papers within 30 days of the service of this order with notice of entry; and it is further

ORDERED that, following the filing of the note of issue, a determination of the damages to be awarded against defendant 2108 Deli Grocery Inc., is to be made at the time of trial, or other disposition, of the remaining portion of the action; and it is further,

ORDERED that, within twenty days hereof, plaintiff shall serve a copy of this order on defendants and on the Trial Support Office at 60 Centre Street, Room 158; and it is further

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

2/26/2019
DATE

~~_____
KATHRYN E. FREED, J.S.C.~~

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE