

Alexander v New York City Hous. Auth.

2019 NY Slip Op 30677(U)

March 18, 2019

Supreme Court, New York County

Docket Number: 150097/2018

Judge: Kathryn E. Freed

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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. 150097/2018

TIFFANY ALEXANDER,

Plaintiff,

MOTION SEQ. NO. 001

- v -

NEW YORK CITY HOUSING AUTHORITY, MILDRED CONNALLY

DECISION AND ORDER

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 13 were read on this motion to/for DEFAULT JUDGMENT

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

FACTUAL AND PROCEDURAL BACKGROUND:

In this personal injury action, plaintiff Tiffany Alexander moves, pursuant to CPLR 3215, for a default judgment against defendants New York City Housing Authority ("NYCHA") and Mildred Connally a/k/a Mildred Connelly ("Connally"). NYCHA opposes the motion. After a review of the motion papers, as well as the relevant statutes and case law, the motion is decided as follows.

Plaintiff commenced the captioned action by filing a summons and complaint verified by her attorney on January 3, 2018. Doc. 1. In the complaint, plaintiff alleged that she was injured on July 11, 2017 while at 71 West 112th Street, apartment 12A, New York, New York. Doc. 1. She claimed that the building was owned, maintained, managed and controlled by NYCHA and that the apartment was occupied as a residence by Connally. Doc. 1. The complaint was personally served on Connally and NYCHA on January 11 and 12, 2018, respectively. Docs. 2

and 3. Plaintiff mailed an additional copy of the summons and complaint to defendants on March 1, 2018. Doc. 10.¹

NYCHA joined issue by service of its verified answer filed March 2, 2018. Doc. 5. In its answer, NYCHA denied all substantive allegations of wrongdoing, asserted various affirmative defenses, and asserted a cross claim against Connally seeking “contribution and/or indemnification.” Doc. 5. NYCHA served its answer on Connally on April 17, 2018. Doc. 12.

On May 3, 2018, plaintiff filed the instant motion seeking a default judgment as against NYCHA and Connally. Doc. 8. In support of the motion, plaintiff’s counsel maintains that he properly served defendants with service of process and that they have failed to answer. Doc. 9. Counsel also represents that “[p]laintiff has a meritorious cause of action . . .” Doc. 9.

In opposition to the motion, counsel for NYCHA represents that plaintiff agreed to withdraw that branch of the motion seeking a default judgment as against NYCHA. Doc. 13. NYCHA annexes to its opposition as Exhibit B an email from plaintiff’s counsel confirming that plaintiff had received NYCHA’s answer and that the motion had been withdrawn insofar as it sought relief against that defendant. Doc. 13.

LEGAL CONCLUSIONS:

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 a party moving for a default judgment pursuant to CPLR 3215 must establish proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the default

¹ Although the affirmation of mailing reflects that the additional copy of the summons and complaint was mailed on March 1, 2015, this appears to be a typographical error since the same document is dated March 1, 2018 and the action had not been commenced in 2015.

in answering or appearing. *See Gantt v North Shore-LIJ Health Sys.*, 140 AD3d 418 (1st Dept 2016).

In order to set forth the facts constituting the claim in a motion for default judgment pursuant to CPLR 3215, a party must submit either a complaint verified by a party with personal knowledge of the facts of the case, or an affidavit by such an individual. *See Mullins v DiLorenzo*, 199 AD2d 218, 219–20 (1st Dept 1993). An attorney affirmation will not suffice for this purpose. *See Mattera v Capric*, 54 AD3d 827, 828 (2d Dept 2008). Nor will a complaint verified by counsel, which “amounts to no more than an attorney’s affidavit and is insufficient to support entry of judgment pursuant to CPLR 3215.” *Feffer v Malpeso*, 210 AD2d 60, 61 (1st Dept 1994). Since plaintiff has submitted neither a complaint verified by, nor an affidavit executed by, an individual with personal knowledge of the facts constituting the alleged claim, she has failed to establish her entitlement to a default judgment against Connally.

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

ORDERED that that branch of the motion by plaintiff Tiffany Alexander seeking a default judgment as against defendant New York City Housing Authority is denied as moot; and it is further

ORDERED that the branch of the motion by plaintiff Tiffany Alexander seeking a default judgment against defendant Mildred Connally a/k/a Mildred Connelly is denied with leave to renew upon proper papers within 30 days of the service of this order with notice of entry, upon penalty of dismissal of plaintiff’s claims as against said defendant; and it is further

ORDERED that, within 30 days of the entry of this order, plaintiff Tiffany Alexander shall serve this order, with notice of entry, on all parties to this action by certified mail, return receipt requested; and it is further

ORDERED that the parties are to appear for a preliminary conference in this matter on May 14, 2019 at 80 Centre Street, room 280, at 2:15 p.m.; and it is further

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

3/18/2019
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	
APPLICATION:	<input type="checkbox"/>	GRANTED			<input type="checkbox"/>	GRANTED IN PART	<input checked="" type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE