

Trejo v Nokit Realty Corp.

2019 NY Slip Op 32109(U)

July 16, 2019

Supreme Court, New York County

Docket Number: 152745/2017

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. 152745/2017

ANNY TREJO,

Plaintiff,

MOTION SEQ. NO. 004

- v -

NOKIT REALTY CORP., SAINT NICHOLAS ELECTRONICS,
ELEGANT LINEN OF NY INC., and WAIL SHUJAIIEH,

DECISION AND ORDER

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 004) 64, 65, 66, 67, 68, 69, 70, 71, 72, 73

were read on this motion to/for DEFAULT JUDGMENT

Plaintiff Anny Trejo moves, pursuant to CPLR 3215, for an order granting her a default judgment against defendants Wail Shujaieh (“Wail”) and Elegant Linen of NY Inc. (“Elegant”). After a review of the motion papers, as well as consideration of the relevant statutes and case law, the motion, which is unopposed, is granted.

This personal injury action was commenced by plaintiff Anny Trejo (“Trejo”) on or about March 23, 2017 by filing of a summons and complaint (Docs. No. 1 and 36).¹ Trejo alleged that, on or about February 23, 2017, she was injured when she fell on the sidewalk/ramp at or near the building located at and known as 1283-85 St. Nicolas Avenue, New York, New York, and that the incident occurred due to the negligence of defendants Nokit Realty Corp. (“Nokit”) and Saint Nicholas

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

Electronics.² Issue was joined by defendant Nokit on or about April 19, 2017. Docs. No. 7 and 16.

On or about November 17, 2017, Nokit filed a third-party complaint against third-party defendants Wail and Elegant (Docs. No. 33 and 34). Then, on November 29, 2018, plaintiff filed an amended summons and complaint naming both Wail and Elegant as direct defendants. Docs. No. 54 and 55. Affidavits of service were filed reflecting that Wail and Elegant were served with process. Docs. No. 58, 60 and 62.

In the instant motion, plaintiff, through her attorney, Andrew Bokar, Esq., an associate with Subin Associates, LLP, alleges that she has a meritorious cause of action against both Wail and Elegant because she was caused to sustain serious physical injuries due to their negligence. Doc. No. 65, paras 2-4. On March 6, 2019, in accordance with CPLR 3215, letters were sent to both Wail and Elegant informing them of plaintiff's intention to file a default motion against them should they not respond to her summons and verified complaint. (See Docs. No. 70 and 71) Bokar additionally avers that defendants' time to answer has expired and that plaintiff has not received an answer from either of them. Doc. 65, at par. 11.

Further, Trejo sets forth the facts of the incident in a sworn affidavit of merit and asks that a default be granted against Wail and Elegant. Doc. No. 72.

²Plaintiff was granted a default against Defendant St. Nicholas Electronics, Inc, i/s/h/a Saint Nicholas Electron in motion sequence 003.

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). Since Trejo has established that each of the foregoing elements has been satisfied, she is entitled to a default judgment against Wail and Elegant.

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

ORDERED that the motion by plaintiff Anny Trejo for a default judgment against defendants Wail Shujaieh and Elegant Linen of NY 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 Anny Trejo assessing damages against defendants Wail Shujaieh and Elegant Linen of NY Inc. with said inquest and

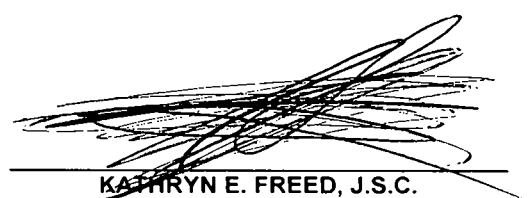
assessment of damages to take place at the time of trial, or other disposition, of the remaining portion of the action; and it is further,

ORDERED that, within twenty (20) days of the entry of this order, plaintiff shall serve a copy of the same on defendants and all parties to this action and on the Trial Support Office at 60 Centre Street, Room 158; and it is further

ORDERED that the remaining parties are to appear for a preliminary conference in this matter on September 17, 2019 at 2:15 p.m. in IAS Part 2, 80 Centre Street, Room 280; and it is further

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

7/16/2019
DATE


KATHRYN E. FREED, J.S.C.

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