

<b>Motta v Chelsea 25th St LLC</b>
2019 NY Slip Op 32793(U)
September 20, 2019
Supreme Court, New York County
Docket Number: 155255/2017
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

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INDEX NO. 155255/2017

JUAN PABLO MOTTA,  
Plaintiff,

MOTION SEQ. NO. 002

- v -

CHELSEA 25TH ST LLC, TALKAP LLC, FRANCK MULLER  
USA, INC., AND ARADCO LIMITED,

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 34, 35, 36, 37, 38, 39, 40

were read on this motion to/for JUDGMENT - DEFAULT

In this Labor Law action, plaintiff Juan Pablo Motta moves, pursuant to CPLR 3215, for a default judgment against defendant Aradco Limited (“Aradco”), setting the matter down for an inquest in favor of plaintiff at the time of trial, and for such other and further relief as this Court deems just and proper (Doc. 34). After a review of the motion papers and the relevant statutes and case law, the motion, which is unopposed, is **granted**.

**FACTUAL AND PROCEDURAL BACKGROUND:**

This action arises from a construction accident on February 24, 2017 in which plaintiff was allegedly injured when he fell from a ladder at a work site located at 207-217 West 25<sup>th</sup> Street, New York, NY (Doc. 1). On June 8, 2017, plaintiff commenced this action against defendants Chelsea 25<sup>th</sup> St. LLC (“Chelsea 25<sup>th</sup>”), Talkap LLC (“Talkap”), and Franck Muller USA, Inc. (“Franck Muller”), alleging that they owned, controlled, and/or maintained the work site (Doc. 1). After the foregoing defendants joined issue (Docs. 3, 8), this Court granted

plaintiff's motion for leave to amend the summons and complaint to add Aradco as a defendant in the action in light of deposition testimony that it owned, controlled and/or maintained the work site (Docs. 25, 28). On February 8, 2019, plaintiff served process on Aradco by delivering the supplemental summons and verified amended complaint to the Secretary of State (Doc. 38). Aradco failed to answer and, on June 19, 2019, plaintiff sent Aradco a letter advising it that he would commence default proceedings if it did not interpose an answer within ten (10) days (Doc. 39). Plaintiff included in the letter the summons and verified amended complaint and the affidavit of service (Doc. 39). To date, Aradco has not answered or otherwise appeared in this action and, on July 29, 2019, plaintiff filed the instant motion, pursuant to CPLR 3215, seeking a default judgment against it (Docs. 34-35).

#### LEGAL CONCLUSIONS:

Pursuant to CPLR 3215(a), “[w]hen a defendant has failed to appear, plead or proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed, the plaintiff may seek a default judgment against him.” It is well settled that, to prevail on a motion for default judgment, the movant must proffer “proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting defendant’s failure to answer or appear” (*U.S. Bank N.A. v Wolnerman*, 135 AD3d 850, 850-851 [2d Dept 2016] [internal quotation marks and citation omitted]; see CPLR 3215 (f); *Gantt v North Shore-LIJ Health Sys.*, 140 AD3d 418, 418 [1st Dept 2016]; *HSBC Bank USA, N.A. v Alexander*, 124 AD3d 838, 839-840 [2d Dept 2015]).

Here, plaintiff has established his entitlement to a default judgment by furnishing proof of service of process on that entity, as well as an affirmation by plaintiff's attorney reflecting that

Aradco failed to answer or appear in this action (Doc. 35 at 2). In further support of his motion, plaintiff submits his own affidavit, in which he states, inter alia, that “[o]n February 24, 2017, [he] was in the course of [his] employment performing construction related work at 207-217 West 25<sup>th</sup> Street, New York[,] NY . . . [when he] was caused to fall from a ladder being used in the performance of [his] work” (Doc. 36 at 2). Plaintiff further claims that he suffered injuries as a result of the fall (Doc. 36 at 2). This Court thus finds that plaintiff’s affidavit sets forth the facts constituting the claim (*see* CPLR 3215 [f]; *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70-71 [2003]; *154 E. 62 LLC v 156 E 62nd St. LLC*, 159 AD3d 498, 498-499 [1st Dept 2018]; *Voelker v Bodum USA, Inc.*, 149 AD3d 587, 588 [1st Dept 2017]).

In accordance with the foregoing, it is hereby:

**ORDERED** that Plaintiff Juan Pablo Motta’s motion for entry of a default judgment, pursuant to CPLR 3215, is **granted** as against Defendant Aradco only, without opposition; and it is further

**ORDERED** that the Clerk is directed to enter judgment in favor of Plaintiff Juan Pablo Motta on the issue of liability as against Defendant Aradco only; and it is further

**ORDERED** that an assessment of damages as against Defendant Aradco is held in abeyance and shall occur at the time of trial or other dispositive determination; 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 previously scheduled compliance conference in this matter on November 19, 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 the Court.

9/20/2019

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

J.S.C.

OTHER

REFERENCE



KATHRYN E. FREED