

Morales v 2314 1st Ave. Corp.
2019 NY Slip Op 32798(U)
September 20, 2019
Supreme Court, New York County
Docket Number: 160942/2018
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. 160942/2018

CARMEN MORALES, Plaintiff,

MOTION SEQ. NO. 001

- v -

2314 1ST AVENUE CORP. and MO'S DELI & GROCERY STORE INC.,

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13

were read on this motion to/for JUDGMENT - DEFAULT

In this personal injury action, plaintiff Carmen Morales moves, pursuant to CPLR 3215, for a default judgment against defendant Mo's Deli & Grocery Store Inc. ("Mo's Deli"), 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. 7, 8). 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 stems from an accident on April 28, 2018, in which plaintiff Carmen Morales was allegedly injured when she tripped and fell on a defective sidewalk abutting 2314 First Avenue, New York, NY (Doc. 1 at 6). On November 11, 2018, plaintiff filed a summons and complaint alleging that Mo's Deli and defendant 2314 1st Avenue Corp. ("2314") negligently maintained the sidewalk (Doc. 1). The first and second causes of action, both sounding in negligence, were alleged against 2314 and Mo's Deli, respectively (Id.). On December 3, 2018,

plaintiff served process on Mo's Deli by delivering the summons and verified complaint with notice of commencement of the action to the Secretary of State (Doc. 4). Following Mo's Deli's failure to answer the summons and complaint, plaintiff sent Mo's Deli a letter on February 22, 2019 advising it that she would commence default proceedings if Mo's Deli did not interpose an answer within ten (10) days (Doc. 11 at 3). Enclosed therewith, plaintiff included the summons and complaint, along with the affidavit of service (Doc. 11 at 3). To date, Mo's Deli has not answered or otherwise appeared in this action and, on July 22, 2019, plaintiff filed the instant motion, pursuant to CPLR 3215, seeking a default judgment against it (Doc. 7-13).

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 her entitlement to a default judgment inasmuch as she has furnished proof of service of process in the form of an affidavit of service reflecting that the summons and complaint were delivered to a person authorized to accept service on its behalf (Doc. 1, 11). Moreover, the affirmation submitted by plaintiff's attorney establishes Mo's Deli's failure

to answer or appear in the action (Doc. 8 at 3). In further support of her motion, plaintiff also submits her own affidavit, which states as follows: "On April 28, 2018, [she] was lawfully walking along the sidewalk abutting 2314 First Avenue, New York, NY, when [she] was caused to trip and fall due to a dangerous sidewalk defect" (Doc. 9). Plaintiff further claims that, "[a]s a result of this incident, [she] suffered severe personal injuries" (Doc. 9). This Court thus finds that plaintiff's affidavit, alleging the defective nature of the sidewalk and the resulting fall, sets forth the facts constituting the claim (*see 154 E. 62 LLC v 156 E 62nd St. LLC*, 159 AD3d 498, 498-499 [1st Dept 2018]; *compare Jacobsen v S & F Serv. Ctr. Co., Inc.*, 131 AD3d 450, 452 [2d Dept 2015]; *Ritzer v 6. East 43rd Street Corp*, 47 AD3d 464, 465 [1st Dept 2008]).

In accordance with the foregoing, it is hereby:

ORDERED that Plaintiff Carmen Morales' motion for entry of a default judgment, pursuant to CPLR 3215, is **granted** as against Defendant Mo's Deli & Grocery Store Inc. only, without opposition; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Plaintiff Carmen Morales on the issue of liability only as against Defendant Mo's Deli & Grocery Store Inc. only; and it is further

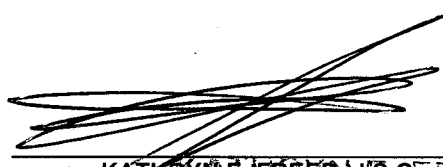
ORDERED that an assessment of damages as against Defendant Mo's Deli & Grocery Store Inc. is held in abeyance and shall occur at the time of trial or other dispositive determination; and it is further

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 preliminary conference in this matter on November 12, 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


KATHRYNE E. FREED, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	J.S.C.	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	