

Ahona v Marriott Intl., Inc.

2019 NY Slip Op 32858(U)

September 26, 2019

Supreme Court, New York County

Docket Number: 162115/2018

Judge: Kathryn E. Freed

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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. 162115/2018

GEOVANNA AHONA,

Plaintiff,

MOTION SEQ. NO. 001

- v -

MARRIOTT INTERNATIONAL, INC., TIMES SQUARE
HOTEL OPERATOR, INC., CWI TIMES SQUARE HOTEL,
LLC, SBCO-NYC OWNER, LLC,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 22, 23, 24, 25, 26

were read on this motion to/for JUDGMENT - DEFAULT

In this personal injury action, plaintiff Geovanna Ahona moves, pursuant to CPLR 3215(a), for a default judgment against defendant SBCO-NYC Owner, LLC (“SBCO”). After a review of the motion papers, as well as the applicable statutes and case law, the motion, which is unopposed,¹ is decided as follows.

Plaintiff commenced this action by filing a summons and verified complaint against defendants Marriott International, Inc. (“Marriott”), Times Square Hotel Operator, Inc. (“TSHO”), CWI Times Square Hotel, LLC (“CWI”), and SBCO on December 26, 2018. Doc. 1. In her complaint, plaintiff alleged that she was injured on January 2, 2016 at a “Courtyard by Marriott” hotel, located at 307 West 37th Street in Manhattan, due to the negligence of the defendants, which allegedly owned, operated, managed, and/or controlled the premises. The parties were thereafter

¹ The issue of whether the instant application is opposed is addressed at page 3.

served with process. Service was made on SBCO through the Secretary of State on January 3, 2019. Doc. 7. An additional copy of the summons and complaint was served on SBCO pursuant to CPLR 3215(g)(4)(ii) on or about August 2, 2018. Doc. 18. Marriott, TSHO, and CWI subsequently joined issue by service of their answers.

Plaintiff now moves, pursuant to CPLR 3215(a), for a default judgment against SBCO. Doc. 16. In support of the motion, plaintiff submits an attorney affirmation; the summons; the complaint, which was verified by her attorney; the affidavits of service; and plaintiff's affidavit of merit. Docs. 16-19. In his affirmation in support of the motion, plaintiff's counsel represents that SBCO failed to serve a timely answer and has not requested an extension of time to answer the complaint. Doc. 16.

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 in order to establish its entitlement to a default judgment pursuant to CPLR 3215, a party must 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. *See Gantt v North Shore-LIJ Health Sys.*, 140 AD3d 418 (1st Dept 2016). Here, although plaintiff has established proper service of the summons and complaint and SBCO's failure to answer, she has failed to make a proper showing of the facts constituting the claim.

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, such as that herein, 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).

Although plaintiff submits a purported affidavit of merit, it is cursory at best. The only portion of plaintiff’s affidavit of merit addressing the facts constituting the claim reads as follows: “On January 2, 2016, I was caused to sustain severe personal injuries at 307 West 37th Street in the City and State of New York, due to the negligence and carelessness of the defendants herein.” Doc. 19 at par. 2. The Appellate Division, First Department has held that extremely similar language in an affidavit of merit failed to set forth facts giving rise to the claim. *See Ritzer v 6 E. 43rd St. Corp.*, 47 AD3d 464 (1st Dept 2008) (plaintiff’s affidavit stating only “I was caused to fall from an elevated work location, sustaining serious injuries” was “plainly insufficient” to “enable a court to determine that a viable cause of action exists.” [citations omitted]). Given this glaring deficiency, plaintiff’s motion is denied with leave to renew upon proper papers.

Finally, although this motion was submitted without opposition on September 12, 2019, counsel for Marriott, TSHO, and CWI filed a purported affirmation in opposition to the instant motion on September 24, 2019. Doc. 22. The opposition papers are thus rejected as untimely. This Court notes, however, that, in the proffered opposition papers, counsel for the said defendants represents that SBCO sold the premises in 2014, prior to the alleged accident. If this is indeed the case, and plaintiff chooses to discontinue her claims against SBCO, then there will of course be no need for plaintiff to renew the instant application.

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

ORDERED that plaintiff Geovanna Ahona's motion for a default judgment against defendant SBCO-NYC Owner, LLC is denied with leave to renew upon proper papers within 30 days, upon penalty of dismissal of its claims against said defendant; and it is further

ORDERED that the parties are to appear for a previously scheduled compliance conference on December 17, 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.

9/26/2019

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