

Jianlan Xie v Kenco Wire & Iron Prods., Inc.
2019 NY Slip Op 33520(U)
November 25, 2019
Supreme Court, New York County
Docket Number: 161966/2018
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

-----X

INDEX NO. 161966/2018

JIANLAN XIE,

MOTION SEQ. NO. 001

Plaintiff,

- v -

KENCO WIRE & IRON PRODUCTS, INC. and THOMAS SMITH,

DECISION AND ORDER

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 22

were read on this motion to/for

JUDGMENT - DEFAULT

In this personal injury action, plaintiff Jianlan Xie ("Xie") moves, pursuant to CPLR 3215, for a default judgment against defendants Kenco Wire & Iron Products, Inc. ("Kenco") and Thomas Smith ("Smith") or, in the alternative, setting this matter down for an inquest in her favor (Doc. 4). Xie also moves for an order, pursuant to CPLR 602, to join any inquest in the captioned action with the trial of a related action pending in this Court styled Jianlan Xie v Skanska USA Civil, Inc., Skanska USA Civil Northeast, Inc., STV Group, Inc. and Tishman Construction Corporation, New York County, Index No. 152501/2016 ("the related action") (Doc. 4). After a review of the motion papers and the relevant statutes and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL HISTORY:

On January 6, 2016, Xie was employed as a window clerk with the United States Post Office located at 421 8th Avenue, New York, New York (Doc. 1). At that time, defendants were

performing construction work on the premises, and a metal object allegedly fell on Xie's head, causing her injuries (Doc. 1). Xie commenced the related action on March 23, 2016 as against Skanska USA Civil, Inc., Skanska USA Civil Northeast, Inc., STV Group, Inc. and Tishman Construction Corporation (collectively "the defendants in the related action") (Doc. 5) but, upon learning the identity of Kenco, the subcontractor performing the construction work, and Smith, the employee who allegedly dropped the metal object on Xie's head, Xie filed a summons and complaint against them on December 20, 2018 alleging claims based on negligence and violations of the Labor Law (Docs. 1, 5).

In support of her motion for a default judgment, Xie argues, *inter alia*, that defendants have failed to respond to the summons and complaint or otherwise appear in this action and that she is thus entitled to a default judgment (Doc. 5). Moreover, Xie requests, pursuant to CPLR 602 (a), that any inquest in this action be held together with the trial in the related action, arguing, *inter alia*, that no party will be prejudiced by the consolidation (Doc. 5 at 7). Defendants fail to oppose the motion.¹

LEGAL CONCLUSIONS:

In support of her motion seeking a default judgment as against defendants, Xie submits, *inter alia*, proof of service of process on both defendants (Doc. 7-8). Additional letters were sent

¹ On October 18, 2019, defendants filed a late answer, which Xie rejected the following day (Docs. 18-19). By letter addressed to this Court and filed October 29, 2019, defendants requested permission to submit papers in opposition prior to a decision on the default motion or permission to accept their late answer (Doc. 21). Xie opposed defendants' requests (Doc. 22). Considering the multiple adjournments granted with respect to the instant motion, defendants' request to submit late papers in opposition to Xie's motion is hereby denied. Moreover, insofar as defendants failed to make a formal motion, pursuant to CPLR 3012 (d), for an extension of time to appear or plead, or to compel the acceptance of their untimely answer, Xie's motion remains unopposed.

to defendants on April 26, 2019, advising them to respond to the summons and complaint within 20 days (Doc. 9). An attorney affirmation in support of Xie's motion establishes that defendants have failed to answer or appear in this action (Doc. 5). Moreover, Xie's affidavit in support of her motion establishes the facts constituting the claim (Doc. 12). In her affidavit, Xie claims, *inter alia*, that Smith, an employee of Kenco, dropped a metal object on her head while performing construction work at 421 8th Avenue (Doc. 12). Thus, Xie has established her entitlement to a default judgement as against defendants (*see* CPLR 3215 (f); *Bautista v Archdiocese of New York*, 164 AD3d 450, 452 [1st Dept 2018]; *Ostroy v Six Square LLC*, 74 AD3d 693, 693 [1st Dept 2010]; *Triangle Props. #2, LLC v Narang*, 73 AD3d 1030, 1032-1033 [2d Dept 2010]).

This Court also grants that branch of Xie's motion pursuant to CPLR 602 (a). Xie asserts to this Court's satisfaction that both actions involve the same January 2016 incident and thus concern common issues of facts and law. Therefore, in the interest of judicial economy, the inquest in this matter shall be held at the time of the trial in the related action (*see* CPLR 602 [a]). This determination will not prejudice any of the defendants and, even if any prejudice exists, defendants, by failing to oppose the motion, have failed to substantiate it (*see Moses v B & E Lorge Family Trust*, 147 AD3d 1043, 1045 [2d Dept 2017]; *Matter of Grynberg v BP Exploration Operating Co. Ltd.*, 127 AD3d 553, 554 [1st Dept 2015], *lv dismissed* 26 NY3d 940 [2015]; *Matter of Progressive Ins. Co. v Countrywide Ins. Co. [Vasquez-Countrywide Ins. Co.]*, 10 AD3d 518, 519 [1st Dept 2004]).² Based on the forgoing, plaintiff's motion is hereby granted in all respects.

² In an attorney affirmation of service, plaintiff's attorney avers that the defendants in the related action were served with a copy of this motion (Doc. 10). However, said defendants have raised no opposition.

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

ORDERED that the branch of plaintiff Jianlan Xie's motion for entry of a default judgment, pursuant to CPLR 3215, is granted, without opposition, as against defendants Kenco Wire & Iron Products, Inc. and Thomas Smith for failure to answer or appear in this action, and it is further

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff Jianlan Xie on the issue of liability as against defendants Kenco Wire & Iron Products, Inc. and Thomas Smith; and it is further

ORDERED that the branch of plaintiff Jianlan Xie's motion to join the inquest in this matter with the trial of the case styled *Jianlan Xie v Skanska USA Civil, Inc., Skanska USA Civil Northeast, Inc., STV Group, Inc. and Tishman Construction Corporation*, Index No. 152501/2016, which is unopposed, is granted; and it is further

ORDERED that the damages, if any, to be awarded against defendants Kenco Wire & Iron Products, Inc. and Thomas Smith shall be determined at the time of the trial of the case

styled *Jianlan Xie v Skanska USA Civil, Inc., Skanska USA Civil Northeast, Inc., STV Group, Inc. and Tishman Construction Corporation*, Index No. 152501/2016; and it is further

ORDERED that, within 20 days after this order is uploaded to NYSCEF, counsel for plaintiff shall serve a copy of this order, with notice of entry, on all defendants, as well as on the County Clerk (141 B) and the Clerk of the Trial Support Office (Room 158), in accordance with the e-filing protocol, and the Clerks shall enter judgment accordingly and mark their records to reflect the joint inquest and trial; and it is further

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


11/25/2019
DATE

CHECK ONE: CASE DISPOSED DENIED NON FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE


KATHRYN E. FREED, J.S.C.