

**Jimenez-Pichardo v 4260 Broadway Condominium
Owner's Assn., Inc.**

2020 NY Slip Op 30039(U)

January 8, 2020

Supreme Court, New York County

Docket Number: 153063/2019

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

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INDEX NO. 153063/2019

LUIS JIMENEZ-PICHARDO,

Plaintiff,

MOTION SEQ. NO. 001

- v -

4260 BROADWAY CONDOMINIUM OWNER'S
ASSOCIATION, INC. and AZUL SALON ESTHETIC
CENTER CORP.,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

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

were read on this motion to/for JUDGMENT - DEFAULT.

In this personal injury action, plaintiff Luis Jimenez-Pichardo moves, pursuant to CPLR 3215, for a default judgment against defendants 4260 Broadway Condominium Owner's Association, Inc. and Azul Salon Esthetic Center Corp. After a review of the motion papers and the relevant statutes and case law the motion, which is unopposed, is granted.

Plaintiff alleges that, on April 24, 2018, he was injured on a defective sidewalk located in front of the premises at 4260 Broadway, New York, New York. The premises were allegedly owned, operated, maintained and/or controlled by defendants.

Following the incident, plaintiff commenced the captioned action against defendants seeking damages for personal injuries. Although plaintiff served defendants with process, they never answered or otherwise appeared in this action.

On November 19, 2019, plaintiff filed the instant motion for a default judgment against the defendants. Although defendants were served with the motion, they did not oppose it.

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 a party moving for a default judgment pursuant to CPLR 3215 must establish proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the default in answering or appearing. *See Gantt v North Shore-LIJ Health Sys.*, 140 AD3d 418 (1st Dept 2016).

The affidavits of service submitted in support of the motion establish that defendants were served with process in this matter. Further, the affirmation submitted by plaintiff’s attorney establishes that defendants failed to answer or otherwise appear in this action. This leaves only the final factor necessary to establish a default, which is whether plaintiff established 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). Here, since the complaint submitted in support of the motion is verified by plaintiff, it is sufficient to establish the facts constituting the claim. Thus, plaintiff is entitled to a default judgment against defendants.

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

ORDERED that the motion by plaintiff Luis Jimenez-Pichardo for a default judgment against defendants 4260 Broadway Condominium Owner's Association, Inc. and Azul Salon Esthetic Center Corp. pursuant to CPLR 3215 is granted; and it is further

ORDERED that this matter is referred to a Special Referee for the purpose of conducting an inquest as to damages to be awarded to plaintiff; and it is further

ORDERED that within 20 days of the entry of this order on the NYSCEF system, plaintiff shall file a note of issue, pay the appropriate fees, and serve a copy of this order with notice of entry, as well as a completed information sheet, on the Special Referee Clerk at sprefnyef@nycourts.gov, who is directed to place this matter on the calendar of the Special Referee's part for the earliest convenient date and notify all parties of the hearing date; and it is further

ORDERED that, within twenty days hereof, plaintiffs shall serve a copy of this order, with notice of entry, on defendants as well as on the Clerk of the Court, in accordance with the e-filing protocol, and the Clerk shall enter judgment in favor of plaintiff as against defendants, jointly and severally, on liability; and it is further

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

1/8/2020
DATE



KATHRYN E. FREED, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE