

Vargas v 4G Cellular Ctr. 2 Inc.
2020 NY Slip Op 30046(U)
January 8, 2020
Supreme Court, New York County
Docket Number: 156212/2018
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. 156212/2018

JOSE VARGAS,

MOTION SEQ. NO. 001

Plaintiff,

- v -

4G CELLULAR CENTER 2 INC. d/b/a
4G CELLULAR CENTER,

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9
were read on this motion to/for JUDGMENT - DEFAULT

In this personal injury action, plaintiff Jose Vargas ("Vargas") moves, pursuant to CPLR
3215, for a default judgment against defendant 4G Cellular Center 2 Inc. d/b/a 4G Cellular
Center ("4G Cellular") (Docs. 3-8). After reviewing the motion papers and the relevant statutes
and case law, the motion, which is unopposed, is granted.

FACTUAL AND PROCEDURAL HISTORY:

On July 3, 2018, Vargas commenced this action against 4G Cellular by filing a summons
and complaint (Doc. 1). In the complaint, Vargas alleged that he sustained injuries while
lawfully on the premises of 4G Cellular located at 1420 St. Nicholas Avenue, New York, New
York (Doc. 1 at 2-3). Specifically, he claimed that his injuries resulted from 4G Cellular's
negligence and that the alleged actions of "defendant, its agents, servants and/or employees
constituted an assault and battery upon" him (Doc. 1 at 4). On July 31, 2019, following 4G
Cellular's failure to answer or otherwise appear in this action, Vargas filed the instant motion

(Docs. 3-8). An affidavit of service filed July 31, 2019 reflects that copies of this motion were delivered to 4G Cellular at its place of business (Doc. 8).

LEGAL CONCLUSIONS:

A plaintiff may seek a default judgment against a defendant “[w]hen a defendant has failed to appear, plead or proceed to trial of an action reached and called for trial” (CPLR 3215 [a]; see *Gantt v North Shore-LIJ Health System*, 140 AD3d 418, 418 [1st Dept 2016]). To establish his or her entitlement to a default judgment, the movant must submit proof of service of the summons and the complaint, proof of the facts constituting the claim, and must provide proof of the defendant’s alleged default (CPLR 3215 [f]). Furthermore, “BCL § 306 (b) (1) provides a mechanism for service of process on the Secretary of State as agent of a domestic corporation, and it further provides that service of process on a corporation shall be complete when the Secretary of State is properly served” (*Fennel v Vesta Const. Group, Corp*, 2017 NY Slip Op 31508[U], 2017 NY Misc LEXIS 2717, *5 [Sup Ct, NY County 2017]).

Vargas’ motion is granted. His affidavit of merit establishes the facts constituting the claim, wherein he avers that “[he] was personally struck by defendant, its agents, servants and/or employees” (Doc. 5). As a result of 4G Cellular’s alleged conduct, Vargas suffered disc herniations, disc bulges, neck and back pain, and a laceration of the head that required ten stitches (Doc. 5). There is also sufficient proof to establish the element of proper service. On August 7, 2018, Vargas served 4G Cellular pursuant to Business Corporation Law § 306 by serving the Secretary of State of the State of New York (Doc. 2). Proof of service was filed with the County Clerk on August 14, 2018 (Doc. 2). Further, in compliance with CPLR 3215 (g) (4), 4G Cellular was served with an additional copy of the summons and complaint at its place of business on

July 31, 2019, which included, *inter alia*, the notice of motion, the affirmation in support, the affidavit of merit and other accompanying exhibits (Doc. 8). By attorney affirmation, Vargas' counsel affirms that 4G Cellular has failed to appear in this action (Doc. 4).

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

ORDERED that the motion by plaintiff Jose Vargas for a default judgment on liability as against defendant 4G Cellular Center 2 Inc., is granted, and the Clerk is directed to enter judgment accordingly; and it is further

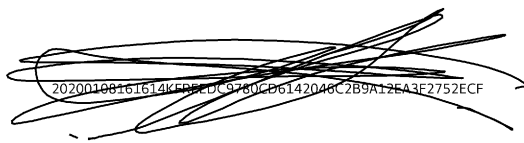
ORDERED that this matter is referred to a Special Referee for the purpose of conducting an inquest as to damages to be awarded to plaintiff Jose Vargas; and it is further

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, plaintiff shall serve a copy of this order on defendant and on the Clerk of the Trial Support Office at 60 Centre Street, Room 158 pursuant to e-filing protocols; 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:

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