

**Fernandez v 24 St. Marks TL LLC**

2020 NY Slip Op 30515(U)

February 24, 2020

Supreme Court, New York County

Docket Number: 160449/2018

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

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INDEX NO. 160449/2018

YOLANDA FERNANDEZ,

Plaintiff,

MOTION SEQ. NO. 001

- v -

24 ST. MARKS TL LLC, A.B. ILIBASSI REALTY COMPANY, L.P., CAFFEBENE INC., CAFFEBENE FRANCHISE CORP., T.K. ST. MARKS CORP., and WAYNE LEE-WEI HSU,

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 22, 23, 24, 25, 26, 27

were read on this motion to/for JUDGMENT - DEFAULT

In this personal injury action, plaintiff Yolanda Fernandez moves, pursuant to CPLR 3215, for a default judgment against defendant A.B. Ilibassi Realty Company, L.P. After a review of the motion papers and the relevant statutes and case law, the motion, which is unopposed, is granted.

Plaintiff was allegedly injured on July 5, 2017 when she tripped and fell on a sidewalk located adjacent to 24 St. Marks Place, New York, New York. Doc. 1. On November 9, 2018, plaintiff commenced the captioned action against defendant 24 St. Marks TL LLC ("24 LLC") which, she claimed, owned, operated, maintained and managed 24 St. Marks Place, and that its negligence caused her injuries. Doc. 1.

On November 27, 2018, plaintiff amended the complaint to allege that she fell between 24 and 26 St. Marks Place. Doc. 2. She named A.B. Ilibassi Realty Company, L.P. ("Ilibassi"), which owned 26 St. Marks Place, as an additional defendant and claimed that its negligence,

along with 24 LLC's, caused her injuries. Doc. 2. 24 LLC joined issue by its verified answer to the amended complaint, filed January 16, 2019.

On February 1, 2019, plaintiff filed a second amended complaint, adding as additional defendants Caffebene Inc., Caffebene Franchise Corp., T.K. St. Marks Corp. ("TK"), and Wayne Lee-Wei Hsu ("Hsu") as additional defendants. Doc. 10. The second amended complaint alleged, inter alia, that Caffebene Inc. and Caffebenne Franchise Corp. were lessees at 24 St. Marks Place. Doc. 10. Ilibassi, TK, and Hsu responded to the amended complaint by their answer filed March 15, 2019. Doc. 14. 24 LLC responded to the second amended complaint in its answer filed August 29, 2019. Doc. 18.

After Caffebene Inc. and Caffebene Franchise Corp. failed to respond to the second amended complaint, plaintiff wrote to those entities on July 8, 2019 to allow them a final opportunity to answer. Doc. 25. Since this attempt was in vain, plaintiff filed the instant motion seeking a default judgment against said defendants. Docs. 20-27.

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 (1<sup>st</sup> Dept 2016).

Plaintiff submits affidavits of service establishing that defendants Caffebene Inc. and Caffebene Franchise Corp. were served with process on February 11 and 19, 2019, respectively. Doc. 24. The affirmation of plaintiff's counsel in support of the motion establishes that, although said defendants were served with process, they have failed to answer or otherwise appear in this

case. Doc. 21. Further, plaintiff's affidavit of merit sets forth the facts constituting the claim. Doc. 22. Thus, plaintiff has established her entitlement to a default judgment against Caffebene Inc. and Caffebene Franchise Corp.

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

ORDERED that the motion by plaintiff Yolanda Fernandez, seeking a default judgment against defendants Caffebene Inc. and Caffebene Franchise Corp., is granted; and it is further

ORDERED that, following the filing of the note of issue, this matter is to be set down for an inquest in favor of plaintiff Yolanda Fernandez, assessing damages against defendants Caffebene Inc. and Caffebene Franchise Corp., with said inquest and assessment of damages to take place at the time of trial, or other disposition, of the remaining portion of the action; and it is further

ORDERED that plaintiff Yolanda Fernandez shall serve a copy of this order on all parties to this action, and on the Trial Support Office at 60 Centre Street, Room 158; and it is further

ORDERED that plaintiff and the appearing defendants are to appear for a preliminary conference in this matter on March 17, 2020 at 2:15 p.m. at 80 Centre Street, Room 280; and it is further

ORDERED that this constitutes the decision of the court.

2/24/2020

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