

Bruncaj v RIJJ Rest., LLC
2021 NY Slip Op 31313(U)
April 20, 2021
Supreme Court, New York County
Docket Number: 450596/2019
Judge: Erika M. Edwards
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ERIKA M. EDWARDS PART 11

Justice

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INDEX NO. 450596/2019

ARBER BRUNCAJ, by his wife and guardian ARIETA BRUNCAJ, and ARIETA BRUNCAJ individually,

MOTION DATE 06/16/2020

Plaintiffs,

MOTION SEQ. NO. 002

- v -

RIJJ RESTAURANT, LLC and SHU NG a/k/a RICHIE NG,

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 89, 90, 91, 92

were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL/DEFAULT

Upon the foregoing documents, the court grants Plaintiffs' motion in part to the extent that the court grants the portion of Plaintiffs' motion seeking to consolidate this matter for discovery and trial with the action filed under index number 154375/2019. However, the court denies the portion of Plaintiffs' motion seeking a default judgment against Defendant Shu Ng a/k/a Richie Ng in this action and Plaintiffs previously withdrew the portion of their motion seeking to strike Defendant RIJJ Restaurant LLC's pleadings.

Plaintiffs Arber Bruncaj by his wife and guardian Arieta Bruncaj, and Arieta Bruncaj individually (collectively, "Plaintiffs") brought this action against Defendants RIJJ Restaurant, LLC ("RIJJ") and Shu Ng a/k/a Richie Ng ("Ng") for injuries Plaintiff Arber Bruncai allegedly suffered on August 26, 2016 when he was assaulted by Defendant Ng, who was an intoxicated patron at Defendant RIJJ's restaurant. Defendant Ng was convicted for his conduct in this matter in New York County and he is currently serving a prison sentence. This matter was transferred to this court from Supreme Court, Kings County.

Plaintiffs state in substance that they were unable to locate Defendant Ng so they could not properly serve him with their Summons and Complaint in this matter. However, they located him and filed a separate action in Supreme Court, New York County against Defendant Ng under Index Number 154375/2019 for the same alleged incident. Plaintiffs allege that they properly served Defendant Ng with the Summons and Complaint in the second action at the prison facility where he was serving his sentence. To date, Defendant Ng failed to appear in either civil case, nor has he opposed this motion.

Plaintiffs now move under motion sequence 002 to consolidate both matters for discovery and trial and for a default judgment against Defendant Ng. Defendant RIJJ filed a partial opposition to the motion and opposed the portion seeking to strike its pleading for failure to comply with Plaintiffs' discovery demands. Plaintiffs subsequently withdrew this portion of their motion and stipulated to discovery on September 29, 2020.

For the reasons set forth herein, the court finds that Plaintiffs demonstrated that consolidation of this matter for discovery and trial with the matter entitled *Arber Bruncaj by his wife and guardian Arieta Bruncaj, and Arieta Bruncaj individually v. Shu Ng*, under Index Number 154375/2019, is warranted pursuant to CPLR 602(a). Therefore, the court grants consolidation of these matters.

However, the court denies the portion of Plaintiffs' motion seeking a default judgment against Defendant Ng, pursuant to CPLR 3215. Plaintiffs filed their motion on this matter, Index Number 450596/2019, prior to consolidation, but they failed to file the motion under Index Number 154375/2019. Since Plaintiffs failed to demonstrate that Defendant Ng was properly served with their summons and complaint for Index Number 450596/2019, they are not entitled to a default judgment against Defendant Ng on this matter. However, they may have been

entitled to a default judgment against Defendant Ng under Index Number 154375/2019 had they filed their motion on that separate matter. Additionally, Plaintiffs are granted leave to file a new motion for a default judgment against Defendant Ng now that the matters have been consolidated under Index Number 450596/2019.

Therefore, the court grants the portion of Plaintiffs' motion seeking to consolidate both actions for discovery and trial, without opposition, and denies the portion seeking a default judgment against Defendant Ng, with leave to file a new motion on the consolidated matter.

As such, it is hereby

ORDERED that the court grants the portion of Plaintiffs' motion seeking to consolidate this matter for discovery and trial with *Arber Bruncaj by his wife and guardian Arieta Bruncaj, and Arieta Bruncaj individually v. Shu Ng*, under Index Number 154375/2019, pending in this Court; and it is further

ORDERED that the consolidation shall take place under Index No. 450596/2019 and the consolidated action shall bear the following caption:

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Arber Bruncaj by his wife and guardian Arieta
Bruncaj, and Arieta Bruncaj individually,

Plaintiffs,

v.
RIJJ Restaurant, LLC and Shu Ng a/k/a Richie Ng,

Defendants.
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and it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that, within thirty (30) days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the Court (60 Centre Street, Room 141 B), who shall consolidate the documents in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that counsel for the movant shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed; and it is further

ORDERED that service of this order upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/suptmanh); and it is further

ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents being consolidated in the consolidated case file under the index number of the consolidated action in the New York State Courts Electronic Filing System or make appropriate notations of such documents in the e-filing records of the court so as to ensure access to the documents in the consolidated action; and it is further

ORDERED that, within thirty (30) days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is hereby directed to reflect the consolidation by appropriately marking the court's records; and it is further


ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the aforesaid *Protocol*; and it is further

ORDERED that the court denies the portion of Plaintiffs' motion for default judgment against Defendant Shu Ng a/k/a Richie Ng with leave to file a new motion for default in the consolidated action; and it is further

ORDERED that counsel are directed to appear for a status conference on May 20, 2021, at 10:00 a.m. via Microsoft Teams (link will be provided).

This constitutes the decision and order of the court.

4/20/2021
DATE


ERIKA M. EDWARDS, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
				OTHER
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
				REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: