SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JOHN J. KELLEY** **PART** **56M**

Justice

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FABIANA URENA FRIAS,

Plaintiff,

- v -

STELLAR MANAGEMENT NY, INC., and 601-609 WEST 175 ST., LLC

Defendants.

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INDEX NO. 151865/2020

MOTION DATE 08/16/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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

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

In this action to recover personal injuries arising from a slip-and-fall accident, the plaintiff moves pursuant to CPLR 3215 for leave to enter a default judgment against the defendants Stellar Management NY, Inc. (Stellar), and 601-609 West 175 St, LLC (601-609). The defendants do not oppose the motion. The motion is granted, and the matter is set down for an inquest to assess damages.

The plaintiff commenced this action on February 20, 2020 by filing a summons and verified complaint. On February 27, 2020, the plaintiff served the summons and verified complaint upon Stellar by delivering two copies thereof to the Secretary of State in Albany, New York. On March 9, 2020, the plaintiff filed proof of service in connection with the service of the summons and complaint upon Stellar. On February 28, 2020, the plaintiff served the summons and verified complaint upon 601-609 by delivering two copies thereof to the Secretary of State. On March 9, 2020, the plaintiff filed proof of service in connection with the service of the summons and complaint upon 601-609. On September 17, 2020, the plaintiff's attorney transmitted letters to both of the defendants, informing them that they had been served with

process, but had not answered the complaint, and that their continued failure to answer or appear could lead to the entry of a default judgment against them. Neither of the defendants has answered the complaint, moved with respect thereto, or appeared in the action.

On March 12, 2021, and thus within one year of the defendants' default (*see* CPLR 3215[c]), the plaintiff made the instant motion for leave to enter a default judgment. On that same date, the plaintiff caused a copy of the notice for default judgment and the motion papers to be served upon the defendants by regular mail. The defendants did not respond.

Where a plaintiff moves for leave to enter a default judgment, he or she must submit proof of service of the summons and complaint upon the defaulting defendant, proof of the defendant's default, and proof of the facts constituting the claim (*see* CPLR 3215[f]; *Woodson v Mendon Leasing Cor*p., 100 NY2d 62, 70-71 [2003]; *Gray v Doyle*, 170 AD3d 969, 971 [2d Dept 2019]; *Rivera v Correction Officer L. Banks*, 135 AD3d 621 [1st Dept 2016]; *Atlantic Cas. Ins. Co. v RJNJ Services, Inc*., 89 AD3d 649 [2d Dept 2011]; *Allstate Ins. Co. v Austin*, 48 AD3d 720, 720 [2d Dept 2008]; *see also Manhattan Telecom. Corp. v H & A Locksmith, Inc*., 21 NY3d 200 [2013]).

The affidavits of service establish that the defendants were properly served with process, and the affirmation of the plaintiff's attorney establishes that the defendants did not answer or appear. As proof of the facts constituting the claim, the plaintiff submitted the complaint which, although verified only by her attorney, was accompanied by her own affidavit. In her affidavit, the plaintiff essentially attested to the allegations set forth in the complaint, specifically, that the defendants were respectively the managing agent and owner of premises located at 605 West 175th Street in Manhattan, that, on September 9, 2019, she slipped and fell on a slippery, wet, or greasy floor at those premises, that the defendants knew or should have known of that condition, and that she sustained personal injuries as a consequence of her fall.

> "CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the

> uncontested cause of action [see, 4 Weinstein-Korn-Miller, NY Civ Prac paras. 3215.22-3215.27]. The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts"

(*Joosten v Gale*, 129 AD2d 531, 535 [1st Dept 1987]; *see Martinez v Reiner*, 104 AD3d 477, 478 [1st Dept 2013]; *Beltre v Babu*, 32 AD3d 722, 723 [1st Dept 2006]). Here, the plaintiff alleges that the defendants owned, managed, maintained, and exercised control over the property where the slip-and-fall accident occurred. The plaintiff asserted that she fell due to the presence of a slippery, wet, or greasy substance on the floor of the defendants' building.

To establish common-law negligence, a plaintiff must prove that the defendant owed him or her a duty of care and breached that duty, and that the breach proximately caused his or her injuries (*see Solomon v City of New York*, 66 NY2d 1026 [1985]; *Wayburn v Madison Land Ltd. Partnership*, 282 AD2d 301 [1st Dept 2001]). The complaint alleges that the defendants owed the plaintiff a duty of care and breached said duty by negligently maintaining their premises or failing to warn of a hazardous condition on the premises, thereby resulting in her injuries. To sustain a common-law negligence claim for an injury resulting from a dangerous premises condition, a plaintiff must demonstrate that an owner or other responsible entity either created the allegedly dangerous condition or had actual or constructive notice of it (s*ee Early v Hilton Hotels Corp*., 73 AD3d 559, 560-561 [1st Dept 2010]). "To constitute constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit defendant's employees to discover and remedy it" (*Gordon v American Museum of Natural History*, 67 NY2d 836, 838 [1986] [citations omitted]).

The complaint and the plaintiff's affidavit provide sufficient proof of the defendants' liability, based upon constructive notice, to support the entry of a default judgment. As the Appellate Division, First Department, has explained:

> "We do not agree . . .that plaintiffs *had to establish actual or constructive notice* of the hazard that caused the slip and fall, on their motion for entry of a default judgment, because a defendant in default is deemed to have admitted 'all traversable allegations in the complaint, including the basic allegation of liability, but does not admit the plaintiff's conclusion as to damages'"

(*Brown v Rosedale Nurseries, Inc.*, 259 AD2d 256, 257 [1st Dept 1999] [emphasis added]). Where, however, there is no sworn statement of fact from the plaintiff, or the plaintiff's affidavit is based on hearsay or conclusory allegations obtained from his or her attorney, the proof is insufficient to support entry of a default judgment (*see id.*; *see also Cohen v Schupler*, 51 AD3d 706, 707 [2d Dept 2008] [conclusory allegations set forth in a complaint or affidavit of merit are not sufficient to support a default judgment]; *Beaton v Transit Facility Corp.*, 14 AD3d 637, 637 [2d Dept 2005] [same]). Applying these rules, the plaintiff's allegations of constructive notice are sufficient here to support her motion for leave to enter a default judgment against the defendants.

Accordingly, it is

ORDERED that the plaintiff's motion pursuant to CPLR 3215 for leave to enter a default judgment against the defendants is granted; and it is further,

ORDERED that the matter is set down for an inquest to assess damages before this court on December 16, 2021, at 9:30 a.m., or on any adjourned date fixed by the court, to be held remotely, and the court shall send an e-mail invitation to counsel for all parties to participate in said inquest via the Microsoft Teams application; and it is further,

ORDERED that the plaintiff shall serve a copy of this order, with notice of entry, upon all defendants, by regular first-class mail, within 15 days of the entry of this order.

This constitutes the Decision and Order of the Court.

10/25/2021
DATE

JOHN J. KELLEY, J.S.C.

CHECK ONE:		**CASE DISPOSED**			**X**	**NON-FINAL DISPOSITION**	
	X	**GRANTED**		**DENIED**		**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**