

Navarro v 207 Sherman Assoc., L.L.C.

2022 NY Slip Op 33612(U)

October 21, 2022

Supreme Court, New York County

Docket Number: Index No. 156153/2021

Judge: Mary V. Rosado

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. MARY V. ROSADO PART 33M

Justice

-----X

LYDIA NAVARRO,

Plaintiff,

- v -

207 SHERMAN ASSOCIATES, L.L.C., JOHNS FRIED CHICKEN

Defendant.

-----X

INDEX NO. 156153/2021

MOTION DATE 06/22/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, and oral argument, which took place on August 30, 2022, where Michael J. Pospis, Esq. appeared for Plaintiff Lydia Navarro ("Plaintiff"), and Jonathan R. Janofsky, Esq. appeared for Defendant 207 Sherman Associates, L.L.C. ("207 Sherman"), Plaintiff's motion for default judgment against Defendant Johns Fried Chicken ("Johns Fried Chicken") is granted. Defendant 207 Sherman's cross-motion for default judgment against Defendant Johns Fried Chicken is denied without prejudice. Johns Fried Chicken did not appear and did not file opposition papers.

This action arises out of Plaintiff's alleged trip and fall on August 26, 2019, on a sidewalk in front of Johns Fried Chicken's premises (NYSCEF Doc. 1). Johns Fried Chicken leases the premises from 207 Sherman (id.) Plaintiff filed her Complaint on June 29, 2021 (id.). Plaintiff effectuated service on Johns Fried Chicken on August 2, 2021 (NYSCEF Doc. 2). Plaintiff effectuated service on 207 Sherman on August 16, 2021 (NYSCEF Doc. 4). 207 Sherman filed its

Answer with cross claims on October 25, 2021 (NYSCEF Doc. 5). Johns Fried Chicken has not answered or otherwise appeared to date.

Plaintiff filed this motion for default judgment against Johns Fried Chicken on June 9, 2022 (NYSCEF Doc. 10). Defendant 207 Sherman cross-moved for default judgment against Johns Fried Chicken on June 16, 2022 (NYSCEF Doc. 16).

An applicant for default judgment against a defendant must submit: (i) proof of service of the summons and complaint, (ii) proof of the facts constituting the claim, and (iii) proof of the defaulting defendant's failure to answer or appear (*PV Holding Corp v AB Quality Health Supply Corp*, 189 AD3d 645 [1st Dept 2020]). Affidavits submitted in support of a motion for default judgment only need to allege enough facts to allow a court to assess where a viable cause of action exists (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). In undertaking this review, the Court is mindful that "defaulters are deemed to have admitted all factual allegations in the complaint and all reasonable inferences that flow from them (*Al Fayed v Barak*, 39 AD3d 371, 372 [1st Dept 2007]).

Plaintiff has satisfied the procedural requirements of CPLR 3215 thereby warranting default judgment. Plaintiff has complied with CPLR 3215(g) by serving the Summons and Complaint on an agent of Johns Fried Chicken authorized to accept service (NYSCEF Doc. 2). Further, Plaintiff sent additional notices of default to Johns Fried Chicken on September 7, 2021 and October 11, 2021 (NYSCEF Docs. 13-14). Plaintiff also provided proof of service of the notice of motion for default judgment (NYSCEF Doc. 15). Finally, Plaintiff has complied with CPLR 3215(f) by providing an affidavit from the Plaintiff herself as to the facts of her claim (NYSCEF Doc. 12). Since Johns Fried Chicken has not answered or otherwise appeared, and Plaintiff has

met the requirements of CPLR 3215, entry of default judgment in favor of Plaintiff and against Johns Fried Chicken is appropriate.

However, 207 Sherman's cross-motion for default judgment against Johns Fried Chicken is denied without prejudice. Defendant 207 Sherman has not complied with the requirements of CPLR 3215. Notably, 207 Sherman has not complied with CPLR 3215(f), which requires a movant to demonstrate proof of its claims. Specifically, CPLR 3215(f) requires either an affidavit from someone with personal knowledge of a movant's claims, or a pleading verified by the movant or an agent of the movant. Here, all there is in support of 207 Sherman's cross-motion is an affirmation by 207 Sherman's attorney. There is no affidavit by an agent or officer from 207 Sherman in support of its cross-motion. Moreover, the cross-claims pled by 207 Sherman are not verified by an agent or officer of 207 Sherman with personal knowledge of its claims. Since 207 Sherman has not met the requirements of CPLR 3215, its cross-motion for default judgment is denied, without prejudice (*Beltre v Babu*, 32 AD3d 722, 723 [1st Dept 2006] ["a judgment entered without a complaint verified by someone or an affidavit executed by a part with personal knowledge of the merits of the claim renders that judgment a nullity"]).

Accordingly, it is hereby

ORDERED that Plaintiff Lydia Navarro's motion for default judgment against Defendant Johns Fried Chicken is granted and the Clerk of the Court is directed to enter judgment accordingly; and it is further

ORDERED that at the time of trial, an inquest on damages against Defendant Johns Fried Chicken on Plaintiff Lydia Navarro's first and second causes of action shall be held; and it is further,

ORDERED that a copy of this order with notice of entry be served by Plaintiff Lydia Navarro upon the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who is directed, upon the filing of a note of issue and a certificate of readiness and the payment of proper fees, if any, to place this action on the appropriate trial calendar for the inquest hereinabove directed; and it is further

ORDERED that Defendant 207 Sherman Associates L.L.C.’s cross-motion for default judgment against Defendant Johns Fried Chicken is denied without prejudice with leave to renew upon proper supporting papers within 120 days of entry of this order; and it is further

ORDERED that within thirty (30) days of entry, Plaintiff Lydia Navarro shall serve a copy of this order upon all parties to this action, including Defendant Johns Fried Chicken, with notice of entry.

This constitutes the decision and order of the Court.

10/21/2022
DATE

Mary V Rosado
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: