

Greenidge v BBZZ Equities, Inc.
2022 NY Slip Op 35141(U)
April 1, 2022
Supreme Court, Bronx County
Docket Number: Index No. 27115-2019E
Judge: Elizabeth A. Taylor
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF BRONX, I.A.S. PART 2
 ALEXANDER GREENIDGE,

Plaintiff,

Index No. 27115-2019E

DECISION/ORDER

-against-

Present:
HON. ELIZABETH A. TAYLOR

BBZZ EQUITIES, INC., POKER ACES DIESEL, INC.,
 ATLANTIS FUEL DISTRIBUTION LLC., FUEL
 INNOVATIONS, INC. and DELAND MOVING &
 STORAGE INC.,

Defendants.

The following papers numbered 1 to ____ read on this motion, _____

	PAPERS NUMBERED (NYSCEF Conf. Notice #s)
No On Calendar of	
Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed-----	60-70
Answering Affidavit and Exhibits-----	
Replying Affidavit and Exhibits-----	
Affidavit-----	
Pleadings -- Exhibit-----	
Stipulation -- Referee's Report --Minutes-----	
Filed papers-----	

In compliance with this Part's rules, the above enumerated working copies, bearing the NYSCEF Confirmation Notice, were submitted directly to chambers for the court's review. Upon the foregoing papers and due deliberation thereof, the Decision/Order on this motion is as follows:

Motion pursuant to CPLR 3215 for an order directing entry of a default judgment against defendant Deland Moving & Storage, Inc., in favor of plaintiff, is granted on default.

Plaintiff commenced this action for injuries allegedly sustained as a result of a slip and fall at the subject premises. Plaintiff alleges that defendant Deland Moving & Storage, Inc. failed to answer the supplemental summons and verified complaint, or otherwise appear in this matter; and therefore, plaintiff seeks a default judgment against defendant Deland Moving & Storage, Inc.

Generally, to establish entitlement to a default judgment, plaintiff must

demonstrate: 1) proof of service of the summons and complaint; 2) proof of the default; and 3) proof of the facts constituting the claim (see CPLR 3215(f); *Atl. Cas. Ins. Co. v RJNJ Services, Inc.*, 89 AD3d 649, 651 [2d Dept 2011]).

In support of the motion, plaintiff submits the affidavit of service of his process server, Robert Guyette, in which he avers that defendant Deland Moving & Storage Inc. was served on March 25, 2021, pursuant to BCL § 306(b), by delivering the summons and verified complaint, together with two copies of such service and the statutory fee, to Colleen Banahan, an agent in the office of the Secretary of State. As such, service was complete upon delivery to the Secretary of State, and defendant Deland Moving & Storage Inc. had 30 days or until April 26, 2021 to interpose an answer (see BCL §306[b][1]; CPLR 3012[c]; CPLR 320[a]; GCL §25-a [1]). Further, plaintiff submits the affirmation of her attorney, in which he affirms that additional mailing of the summons and verified complaint was served upon defendant Deland Moving & Storage Inc. on May 27, 2021. Therefore, the instant application is being made beyond 20 days of said additional mailing (see CPLR 3215[g][4][i]). Moreover, plaintiff's counsel affirms that defendant Deland Moving & Storage Inc. has failed to answer or otherwise appear in this action. Accordingly, this court finds that plaintiff has established that defendant Deland Moving & Storage Inc. was served with the supplemental summons and verified complaint, and that it failed to answer or otherwise appear in this action. Plaintiff moved for a default judgment on June 14 and on October 11, 2021, within one year of the alleged default on April 26, 2021.

To establish proof of the facts constituting the claim, a plaintiff must submit an affidavit or verified complaint from someone with personal knowledge, setting forth sufficient facts to establish a *prima facie* case, *i.e.*, that the plaintiff has a viable cause of action (see *Wynkoop v 622A President St. Owners Corp.*, 169 AD3d 1100, 1103 [2d Dept 2019]; *Morgenthau v Rodriguez*, 261 AD2d 165, 166 [1st Dept 1999]).

Here, plaintiff submits his affidavit, in which he avers that on March 5, 2019, he “was caused to slip and fall on ice on the sidewalk in front of the entrance to the Dunkin’ Donuts/mini mart section of the gas station . . . [and that the property] was managed, maintained, repaired and/or controlled” by defendant Deland Moving & Storage Inc. Accordingly, this court finds that plaintiff has established proof of the facts constituting her claim.

Upon service of a copy of this order with notice of entry upon the Trial Support Clerk, the Clerk shall set this matter down for an inquest and assessment of damages against defendant Deland Moving & Storage Inc. at the inquest and assessment of damages against co-defendant Poker Aces Diesel, Inc. and the trial of co-defendants BBZZ Equities, Inc., Atlantis Fuel Distribution LLC. and Fuel Innovations, Inc., or after the filing of a Note of Issue and payment of the appropriate fees, if the action is settled or discontinued as to the remaining defendants. It is noted that plaintiff was granted a default judgment against defendant Poker Aces Diesel, Inc. on May 11, 2020. It is also noted that as of the date of this order, a Note of Issue has been filed.

Within 10 days of entry of this order, plaintiff shall serve a copy of this order with

notice of entry upon defendant Deland Moving & Storage Inc.

Plaintiff shall: 1) serve defendant Deland Moving & Storage Inc., at least 10 days prior to the inquest/trial, with notice of the inquest/trial; and 2) present proof of such notice to the Part Clerk at the inquest/trial.

The foregoing shall constitute the decision and order of this court.

Dated: APR 01 2022



J.S.C.

Elizabeth A. Taylor