

**Mahama v Jah Seal Inc.**

2023 NY Slip Op 32008(U)

June 15, 2023

Supreme Court, New York County

Docket Number: Index No. 152060/2022

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

*Justice*

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JOSEPH MAHAMA,

Plaintiff,

- v -

JAH SEAL INC., KAVITA S. MOODY

Defendant.

-----X

INDEX NO. 152060/2022  
MOTION DATE N/A  
MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, and without any opposition, Plaintiff Joseph Mahama’s (“Plaintiff”) motion seeking a default judgment against Defendants Jah Seal Inc. (“Defendant Store”) and Kavita S. Moody (“Defendant Owner”) (together “Defendants”) is granted in part and denied in part.

**I. Discussion**

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]).

**A. Proof of Service of Summons and Complaint**

Here, process was served on Defendant Owner by affixing a true copy of the Complaint to the entrance door of Defendant Owner’s place of residence on March 18, 2022 (NYSCEF Doc. 8). A true and attested copy of the same was delivered to the Defendant Owner’s place of residence by First Class Mail on March 21, 2022 (*id.*). Defendant Store was served with process

on March 18, 2022, by delivering it to an authorized agent in the Office of the Secretary of State (NYSCEF Doc. 9). Defendant Store was mailed a courtesy follow up notice on October 27, 2022 (NYSCEF Doc. 10). As such, the Court finds that Plaintiff has satisfied the notice requirements of CPLR § 3215 (g) with respect to both Defendants.

### **B. Proof of the Facts Constituting the Claim**

Pursuant to CPLR 3215(f), an applicant for a default judgment must file proof by affidavit made by the party of the facts constituting the claim (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). While a verified complaint may be submitted instead of the affidavit when the complaint is properly served (*id.* at 70-71), the complaint submitted in this case (NYSCEF Doc. 1) is not verified. In circumstances where a complaint is not verified, a default judgment is only appropriate when accompanied by an affidavit from a party with knowledge, that includes, *inter alia*, proof of the facts (*Woodson* at 70). Affidavits submitted in support of default judgment only need to allege enough facts to allow a court to assess where a viable cause of action exists (*Woodson* at 71). 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]).

#### **i. First Cause of Action for Negligence**

The Court finds that on Plaintiff’s First Cause of Action for negligence against Defendant Store (“First Cause of Action”), Plaintiff has sufficiently proved the facts constituting his claim, in satisfaction of CPLR § 3215 (f). For a plaintiff to establish a cause of action sounding in negligence, they “must meet the initial burden of showing (1) the existence of a duty flowing from defendant to plaintiff; (2) a breach of this duty; (3) a reasonably close causal connection between the contact and the resulting injury; and (4) actual loss, harm or damage (*Febesh v*

*Elcejay Inn Corp.* AD2d 102, 104 [1<sup>st</sup> Dept 1990]). Plaintiff's Affidavit (NYSCEF Doc. 6) states that Defendant Store advertised the Beverage as containing health juice but did not advertise the Beverage's alcohol content, which was above 10%, that after Plaintiff purchased and consumed the Beverage and began to drive his motor vehicle he was pulled over and charged with driving under the influence of alcohol ("the Charges"), and that as a result of the Charges and following prosecution, Plaintiff had to hire criminal defense counsel and experienced a loss of freedom as well as emotional distress. The facts proffered by Plaintiff are sufficient for the court to determine that Plaintiff maintains a viable cause of action for negligence against Defendant Store.

ii. Second Cause of Action for Strict Products Liability

Regarding Plaintiff's Second Cause of Action for strict products liability against Defendant Store ("Second Cause of Action"), the facts alleged in Plaintiff's Affidavit (NYSCEF Doc. 6) are insufficient for the Court to determine that a viable cause of action exists.

In bringing a claim for strict products liability in New York, a plaintiff may assert that a product is defective because of a mistake in the manufacturing process, or because of an improper design, or because the manufacturer failed to provide adequate warnings regarding the use of the product (*Voss v Black & Decker Mfg. Co.*, 59 NY2d 102, 106-107 [1983]). In this case, Plaintiff's Second Cause of Action against the Defendant Store (NYSCEF Doc. 1) alleges manufacturing and design defects in the Beverage.

To succeed on his Second Cause of Action for strict products liability based on a design defect, Plaintiff must show, *inter alia*, that the product in question "did not perform as intended" (*Castillo v. Aubuchon Hardware*, 49 AD3d 395, 396 [1<sup>st</sup> Dept 2008]). While Plaintiff's Affidavit (NYSCEF Doc. 6) states that Plaintiff was unaware that the Beverage contained alcohol, it fails

to assert any facts regarding the Beverage's failure to perform its intended purpose. Accordingly, the Court finds that Plaintiff has failed to prove facts sufficient to support his claim of strict products liability based on manufacturing defects, as required by CPLR § 3215 (f).

Plaintiff's complaint states that "the manner in which the Defendant Store manufactured its smoothies was not reasonably safe in its design" (NYSCEF Doc. 1). To succeed on his Second Cause of Action for strict products liability based on design defects, Plaintiff must show "that the manufacturer breached its duty to market safe products when it marketed a product designed so that it was not reasonably safe and that the defective design was a substantial factor in causing plaintiff's injury" (*Voss* at 107). Further, Plaintiff "is under an obligation to present evidence that...it was feasible to design the product in a safe manner" (*id.* at 108). Plaintiff's Affidavit (NYSCEF Doc. 6) fails to allege that the Beverage, as designed, was not reasonably safe, or that Plaintiff suffered any damages as a result of a design defect. Further, Plaintiff's Affidavit (*id.*) does not allege that it was feasible to design the product in a safer manner. Accordingly, the Court finds that Plaintiff has failed to prove facts sufficient to support his Second Cause of Action for strict products liability based on design defects, as required by CPLR § 3215 (f).

iii. Third Cause of Action to Pierce the Corporate Veil

With respect to Plaintiff's Third Cause of Action to pierce the corporate veil ("Third Cause of Action"), Plaintiff's Affidavit (NYSCEF Doc. 6) fails to provide sufficient facts to impose alter ego liability on Defendant Owner. As Plaintiff's Affirmation in Support (NYSCEF Doc. 5) correctly states, "the elements of a piercing the corporate veil claim are '(1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in

the plaintiff's injury. *James v. Loran Realty V Corp.*, 85 A.D.3d 619, 619 (1<sup>st</sup> Dep't 2011)."

While Plaintiff's Affidavit (NYSCEF Doc. 6) includes the conclusory statement that the Defendant Owner "controlled the Defendant Store's operations," it contains no statement alleging that the Defendant Owner exercised complete domination of the corporation, nor any statement alleging that such domination was used to commit a fraud or wrong against Plaintiff which resulted in Plaintiff's injury. In light of the foregoing, Plaintiff has failed to provide sufficient facts to impose alter ego liability on Defendant Owner.

### **C. Proof of the Defaulting Defendant's Failure to Appear**

Pursuant to CPLR 3012(c), service of an answer is required within thirty days after service is complete. As discussed above, Defendant Owner was served with process on March 18 and 21, 2022 (NYSCEF Doc. 8), and Defendant Store was served on March 18, 2022 (NYSCEF Doc. 9). To date, Defendants have failed to appear.

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for default judgment against Defendant Store is granted as to liability on Plaintiff's First Cause of Action for negligence; and it is further

ORDERED that an inquest on damages against Defendant Store on Plaintiff's First Cause of Action for negligence is directed; and it is further

ORDERED that Plaintiff's motion for default judgment against Defendant Store is denied without prejudice on Plaintiff's Second Cause of Action for strict products liability for failure to provide sufficient facts to constitute the claim, with leave to renew on or before October 6, 2023. Should Plaintiff not renew his motion for default judgment against Defendant Store on his Second Cause of Action, Plaintiff's Second Cause of Action may be considered abandoned; and it is further

ORDERED that Plaintiff's motion for default judgment against Defendant Owner is denied without prejudice on Plaintiff's Third Cause of Action to pierce the corporate veil for failure to provide sufficient facts to impose alter ego liability, with leave to renew on or before October 6, 2023. Should Plaintiff not renew his motion for default judgment against Defendant Owner on his Third Cause of Action, Plaintiff's Third Cause of Action may be considered abandoned; and it is further

ORDERED that a copy of this order with notice of entry be served by the movant 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 calendar for the inquest hereinabove directed; and it is further

ORDERED that within ten (10) days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, upon all Defendants via first-class mail at their last known business addresses; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This Constitutes the Decision and order of the Court.

6/15/2023  
DATE

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

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