

Caanan v Fordham Valentine Assoc. LLC

2024 NY Slip Op 30996(U)

March 26, 2024

Supreme Court, New York County

Docket Number: Index No. 153513/2022

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

-----X

CAANAN JAMES,

Plaintiff,

- v -

FORDHAM VALENTINE ASSOCIATES LLC, RACKSON
RESTAURANTS, LLC, D/B/A BURGER KING, PAV-LAK
CONTRACTING, INC., CARUSO CONTRACTING, LLC,

Defendants.

-----X

FORDHAM VALENTINE ASSOCIATES LLC

Third-Party Plaintiff,

-against-

RACKSON RESTAURANTS, LLC D/B/A BURGER KING

Third-Party Defendants.

-----X

RACKSON RESTAURANTS, LLC, D/B/A BURGER KING

Second Third-Party Plaintiffs,

-against-

VALMAR ELECTRIC CORP., NORDEST SERVICES LLC

Second Third-Party Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 51, 52, 53, 54, 55
were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, there being no opposition and good cause having been
shown, Plaintiff James Caanan's ("Plaintiff") motion for default judgment against Defendant
Caruso Contracting LLC ("Caruso") and in favor of Plaintiff, is granted.

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]).

The Court finds that Plaintiff has satisfied proof of service by providing Affidavits of Service evidencing service of the Supplemental Summons and Amended Verified Complaint upon Defendant Caruso via the Secretary of State on July 31, 2023, and personally through a person authorized to accept service on August 8, 2023 (NYSCEF Doc. 54). Plaintiff has also satisfied his minimal burden of proving the facts constituting his claim by submitting an Affidavit of Merit sworn to October 6, 2023 (NYSCEF Doc. 53). Further, Defendant Caruso has failed to file an answer or otherwise appear in this matter despite its time for doing so having expired. Therefore, entry of default judgment as to liability against Defendant Caruso and in favor of Plaintiff on Plaintiff's First Cause of Action for negligence, Second Cause of Action for violation of Labor Law 200, Third Cause of Action for violation of Labor Law 240(1), and Fourth Cause of Action for violation of Labor Law 241(6), is appropriate.

Accordingly, it is hereby,

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ORDERED that Plaintiff James Caanan's motion for default judgment against Defendant Caruso Contracting LLC is granted as to liability on Plaintiff's first through fourth causes of action; and it is further

ORDERED that an inquest on damages against Defendant Caruso Contracting LLC on Plaintiff James Caanan's first through fourth causes of action is directed at the time of trial; and it is further

ORDERED that a copy of this Order with notice of entry be served by counsel for Plaintiff James Caanan 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 such service 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 of the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that the active parties in this case are directed to submit a proposed Status Conference Order to the Court on or before April 30, 2024 via e-mail to SFC-Part33-Clerk@nycourts.gov. If the parties are unable to agree to a proposed Status Conference Order, the parties are directed to appear for an in-person Status Conference with the Court on May 1, 2024 at 9:30 a.m. in 60 Centre Street, Room 442, New York, New York; and it is further

ORDERED that within 30 days of entry, counsel for Plaintiff James Caanan shall serve a copy of this Decision and Order, with notice of entry, via first-class mail, on all parties to this case at their last known business or residential address; 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.

3/26/2024			<i>Mary V Rosado</i>		
DATE			HON. MARY V. ROSADO, J.S.C.		
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
				REFERENCE	