

Vazquez v 54 St. Auto Care Inc.

2024 NY Slip Op 33767(U)

October 7, 2024

Supreme Court, New York County

Docket Number: Index No. 652783/2022

Judge: Nicholas W. Moyne

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. NICHOLAS W. MOYNE PART 41M

Justice

-----X

ALFONSO VAZQUEZ,

Plaintiff,

- v -

54 ST. AUTO CARE INC., NIKOLAY SANTANA, LAURA
SANTANA, NICHOLAS PAPILE

Defendant.

-----X

INDEX NO. 652783/2022

MOTION DATE 05/24/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17

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

Upon the foregoing documents, it is

Plaintiff, Alfonso Vazquez, commenced the underlying action to recover for amounts allegedly owed for unpaid wages and/or statutory damages, alleging claims of failure to pay minimum wage, overtime, spread of hours premium, and additional violations under New York Labor Law, including retaliation. Plaintiff now moves for an order, pursuant to CPLR § 3215, directing entry of a default judgment against defendants, 54 St. Auto Care Inc., Nikolay Santana, Laura Santana, and Nicholas Papile, for the amounts of \$997.50 in unpaid minimum and overtime wages, \$997.50 in liquidated damages pursuant to NYLL, \$81,000.00 for statutory damages under the NYLL for wage notice and wage statement violations, \$12,675.00 for damages of retaliatory termination, pre- and post-judgment interest, and attorney’s fees.

On August 23, 2022, plaintiff, in accordance with the method of service proscribed by Business Corporation Law § 306, served the defendant 54 St. Auto Care Inc. with the summons and complaint for this action (NYSCEF Doc. No. 2). On August 24, 2022, August 25, 2022, and

September 5, 2022, plaintiff, in accordance with the method of service proscribed by CPLR § 308, served defendants Nicholas Papile, Laura Santana, and Nikolay Santana, with the summons and complaint for this action (NYSCEF Doc. No. 3-5). The applicable time period in which defendants ought to have answered or otherwise appeared has passed, and defendants have failed to do so. On May 24, 2023, within the statutory one-year period following the defendants' default in responding to the complaint, Vasquez filed its application seeking entry of a default judgment (*see* CPLR § 3215 [a]).

Plaintiff, on May 24, 2023, in accordance with the requirements of CPLR § 3215 (g), mailed an additional notice and accompanying papers for each defendant (*see* NYSCEF Doc. No. 17). Additionally, as required by CPLR § 3215 (f), plaintiff has provided proof of service of the summons and complaint, the facts supporting each of its claims, the default, and the amount due, through the verified complaint and the affidavit with supporting exhibits of Mohammed Gangat, Esq. and Alfonso Vasquez, a party with personal knowledge (NYSCEF Doc. No. 7-14; *see Bigio v Gooding*, 213 AD3d 480, 481 [1st Dept 2023] ["To demonstrate facts constituting the claim, the movant need only proffer proof sufficient to enable a court to determine that a viable cause of action exists"]).

However, plaintiff has failed to demonstrate compliance with the statutory requirement of 50 U.S.C. § 3931, by filing a nonmilitary affidavit for the individual defendants. While the absence of a valid nonmilitary affidavit may be a simple irregularity and not a jurisdictional defect, the nonmilitary affidavit is a requirement under federal law for any civil action to protect military personnel from default judgments (*Petre v Lucia*, 205 AD3d 438 [1st Dept 2022]). Therefore, although plaintiff has established his entitlement to entry of a default judgment against 54 St. Auto Care Inc., the motion for entry of a default judgment against defendants,

Nicholas Papile, Laura Santana, and Nikolay Santana, must be denied as no affidavit of nonmilitary service appears in the record (*Unitrin Advantage Ins. Co. v 21st Century Pharm.*, 158 AD3d 450, 451 [1st Dept 2018]). However, as this procedural infirmity may be cured, the motion is denied without prejudice to renew (*see Sykes v Ricardo LLC* [Sup Ct, New York County 2022]).

Accordingly, it is hereby

ORDERED that the motion by plaintiff Alfonso Vasquez is GRANTED IN PART; to the extent that the portion of the motion seeking entry of a default judgment as against defendant 54 St. Auto Care Inc., is GRANTED; and it is further

ORDERED that the motion by plaintiff Alfonso Vasquez is otherwise DENIED without prejudice as to the portion seeking entry of a default judgment as against defendants, Nicholas Papile, Laura Santana, and Nikolay Santana, with leave to renew within 60 days of the date provided in this decision and order and upon the submission of proper proof of nonmilitary status; and it is further

ADJUDGED and ORDERED that plaintiff Alfonso Vasquez, his representative having an address at Law Office of Mohammed Ganget, 675 Third Avenue, Suite 1810, New York, NY 10017, is granted a default judgment against defendant, 54 St. Auto Care Inc., having an address at 415 West 54th Street, New York, NY 10019, in the amount of \$997.50 for unpaid minimum and overtime wages, \$997.50 in liquidated damages pursuant to NYLL, \$81,000.00 for statutory damages under the NYLL for wage notice and wage statement violations, \$12,675.00 for damages of retaliatory termination; and it is further

ADJUDGED and ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff and against the defendant, 54 St. Auto Care Inc., in the amount of \$ 997.50 in

unpaid minimum and overtime wages, \$997.50 in liquidated damages pursuant to NYLL, \$81,000.00 for statutory damages under the NYLL for wage notice and wage statement violations, \$12,675.00 for damages of retaliatory termination, plus interest at the rate of 9 % from August 8, 2022, to the date of this order, as calculated by the Clerk in the amount of \$ _____, together with costs and disbursements in the amount of \$ _____ as taxed by the Clerk upon the submission of an appropriate bill of costs, for the total judgment amount of \$ _____, and that the plaintiff have execution thereof.

This constitutes the judgment, decision, and order of the court.

10/7/2024
DATE



NICHOLAS W. MOYNE, J.S.C.

DATE

CLERK

CHECK ONE:

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

APPLICATION:

CHECK IF APPROPRIATE: