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| <b>Pavone v Haddad</b>                                                                                                                                                                                                         |
| 2024 NY Slip Op 35349(U)                                                                                                                                                                                                       |
| July 11, 2024                                                                                                                                                                                                                  |
| Supreme Court, Westchester County                                                                                                                                                                                              |
| Docket Number: Index No. 61420/2022                                                                                                                                                                                            |
| Judge: David F. Everett                                                                                                                                                                                                        |
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| This opinion is uncorrected and not selected for official publication.                                                                                                                                                         |

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER**

-----X  
JULIAN PAVONE,

Plaintiff,

-against-

ELLIOT HADDAD, SOPHIE SASSON, NOLAN  
MULLANPHY, MICHAEL STALLONE, CADE CANAS,  
LOUIS VARSAMES, LEONEL CHAPARRO, MILES  
COURTNEY, AND CASA RENARD LLC,

Defendants.

-----X  
EVERETT, J.

**INDEX NO. 61420/2022**

**DECISION/ORDER  
Motion Seq. 5**

Upon consideration of the papers filed in the New York State Courts Filing System (NYSCEF) Doc Nos. 101-108, relative to the motion by plaintiff for a default judgment (CPLR 3215) against Casa Renard LLC, the Court determines as follows:

In this action, the amended complaint (NYSCEF Doc No. 103) states three causes of action: assault and battery, negligence and negligent entrustment against Casa Renard LLC, and negligence of defendants and violations of General Obligations Law § 11-100 against Elliot Haddad, Casa Renard LLC and Sophie Sasson.

In the affirmation in support (NYSCEF Doc No. 102), the background is stated, as follows:

Plaintiff seeks monetary damages for personal injuries sustained due to an assault and battery in which he was assaulted by several teenagers who became intoxicated at a party, which was held, on a property located at 18 Fox Meadow Road, Scarsdale, N.Y. 10583 which was owned and operated by the Defendant Casa Renard LLC. (Ex. 1). In particular, Plaintiff asserts that the Defendant Casa Renard LLC was negligent in allowing, permitting and suffering, Defendant Elliott Hadad

to have unsupervised access to the property and alcohol that was stored upon the property, and to have an unsupervised party in which teenagers were permitted to become intoxicated, as a direct result of which Plaintiff was assaulted and battered by these intoxicated teenagers.

Plaintiff's attorney affirms that despite being served, Casa Renard LLC has not answered and the time to answer has not been extended.

CPLR 3215 (a) provides: "When a defendant has failed to appear, plead or proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed, the plaintiff may seek a default judgment against him." In a motion for leave to enter a default judgment against a defendant based on the failure to answer or appear, a plaintiff must submit proof of service of the summons and complaint, proof of the facts constituting the cause of action, and proof of the defendant's default (*Bank of N.Y. Mellon v Van Roten*, 181 AD3d 549, 550 [2d Dept 2020]).

CPLR 3215 (f) requires the applicant for a judgment by default to submit proof "by affidavit made by the party" of the facts constituting the claim, and provides that "[w]here a verified complaint has been served, it may be used as the affidavit of the facts constituting the claim and the amount due; in such case, an affidavit as to the default shall be made by the party or the party's attorney." (See *DLJ Mtge. Capital, Inc. v United Gen. Tit. Ins. Co.*, 128 AD3d 760, 762 [2d Dept 2015].)

Limited Liability Company Law § 303 provides for service of process on limited liability companies (see CPLR 311-a). One option for service of process on the secretary of state, as agent of a domestic limited liability company or authorized foreign limited liability company, is as follows:

(1) Personally delivering to and leaving with the secretary of state or his or her deputy, or with any person authorized by the secretary of state to receive such service, at the office of the department of state in the city of Albany, duplicate

copies of such process together with the statutory fee, which fee shall be a taxable disbursement. Service of process on such limited liability company shall be complete when the secretary of state is so served. The secretary of state shall promptly send one of such copies by certified mail, return receipt requested, to such limited liability company at the post office address on file in the department of state specified for that purpose.

In *Trini Realty Corp. v Fulton Ctr. LLC* (53 AD3d 479 [2d Dept 2008]), the Court noted:

In support of its motion pursuant to CPLR 3215 for leave to enter a judgment against the defendant upon its default in appearing or in answering the complaint, the plaintiff presented a process server's affidavit that was sufficient to create a presumption that service upon the defendant was effected by delivery of the summons and the verified complaint to the Secretary of State (*see* CPLR 311-a [a]; Limited Liability Company Law § 303 [a]; *Engel v Lichterman*, 62 NY2d 943, 944-945 [1984]; *Commissioners of State Ins. Fund v Nobre, Inc.*, 29 AD3d 511 [(2d Dept) 2006]; *Nichols v Richmond Ambulance Serv.*, 259 AD2d 741 [(2d Dept) 1999]). In addition, the plaintiff submitted proof of the facts constituting the claim and the default (*see* CPLR 3215 [f]; *Lipp v Port Auth. of N.Y. & N.J.*, 34 AD3d 649 [(2d Dept) 2006]; *599 Ralph Ave. Dev., LLC v 799 Sterling Inc.*, 34 AD3d 726 [(2d Dept) 2006]; *Giovanelli v Rivera*, 23 AD3d 616 [(2d Dept) 2005]).

Uniform Rules for Trial Courts (22 NYCRR) §202.5-bb (b) (3) states that personal service of initiating documents in an action commenced electronically “shall be accompanied by a notice, in a form approved by the Chief Administrator, advising the recipient that the action is subject to electronic filing pursuant to this section.”

CPLR 2214 provides: “A notice of motion and supporting affidavits shall be served at least eight days before the time at which the motion is noticed to be heard.” If a movant fails to give requisite notice of motion, the Court is deprived of jurisdiction to entertain the motion, which is invalidated (*see Paulus v Christopher Vacirca, Inc.*, 128 AD3d 116, 124-125 [2d Dept 2015]; *Morabito v Champion Swimming Pool Corp.*, 18 AD2d 706, 707 [2d Dept 1962]).

Here, plaintiff submits proof of service of the supplemental summons and amended complaint by filing an affidavit of service (NYSCEF Doc No. 104), which states that the supplemental summons and amended verified complaint were served via delivery of the pleadings

to the Secretary of State (Limited Liability Company § 303). Proof of the facts constituting the cause of action is provided by plaintiff's verification of the amended verified complaint (NYSCEF Doc No. 106). Plaintiff's attorney affirms that Casa Renard LLC has not answered and the time to answer has not been extended (NYSCEF Doc No. 102). In addition, plaintiff submits an affidavit (NYSCEF Doc No. 105) showing there was additional mailings of the pleadings (CPLR 3215 [g] [4]), and affidavits of service of the notice of motion by mail (NYSCEF Doc No. 107) and via NYSCEF (NYSCEF Doc No. 108).

However, plaintiff does not show that Casa Renard LLC was served with the notice of electronic filing.

Accordingly, it is,

ORDERED that plaintiff's motion, for a default judgment against defendant Casa Renard LLC, is denied without prejudice to renew on proper papers.

The foregoing constitutes the Decision and Order of the Court.

Dated: White Plains, New York  
July 11, 2024

ENTER:

  
HON. DAVID F. EVERETT, J.S.C.

Filed in NYSCEF