

Fama v Elite Car Wash & Professional Detailing Corp.
2024 NY Slip Op 35510(U)
September 20, 2024
Supreme Court, Westchester County
Docket Number: Index No. 71810/2023
Judge: Joan B. Lefkowitz
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SUPREME COURT: STATE OF NEW YORK
 IAS PART WESTCHESTER COUNTY
 PRESENT: HON. JOAN B. LEFKOWITZ, J.S.C.

To commence the statutory time period 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.

-----X
 DONNA FAMA,

Plaintiff,

-against-

ELITE CAR WASH & PROFESSIONAL
 DETAILING CORP., BRYN MAWR CAR AND
 TRUCK DETAILING INC., PALMER 468 INC.,
 PALMER ROAD REALTY COMPANY LLC,
 EDUARDO BALLINAS, "JOHN DOE", a name
 intended to identify an individual owner of the pit bull
 which attacked the plaintiff on May 26, 2022,

Defendants.
 -----X

DECISION & ORDER

Index No: 71810/2023

Motion Sequence No. 2

The following electronically filed papers (NYSCEF Doc Nos. 29-40) were read on the motion by the plaintiff for an order, pursuant to CPLR 3215, granting leave to enter a default judgment against the defendants, Elite Car Wash & Professional Detailing Corp., Bryn Mawr Car and Truck Detailing Inc. and Palmer 468 Inc.

Motion Sequence No. 2

Notice of Motion-Affirmation in Support-Exhibits (A-H)-Affirmations of Service (2)

Upon reading the foregoing papers, the motion is determined as follows:

Plaintiff sues to recover monetary damages for personal injuries allegedly sustained on May 26, 2022, when, without provocation, she was purportedly attacked and bitten by a pit bull while walking to her motor vehicle from the public walkway adjacent to the real properties located at 468 and 540 Palmer Road, Yonkers, New York 10701. Plaintiff alleges, *inter alia*, that defendants Elite Car Wash & Professional Detailing Corp. (Elite), Bryn Mawr Car and Truck Detailing Inc. (Bryn Mawr), Palmer 468 Inc. (Palmer 468), Palmer Road Realty Company LLC (Palmer Road) and Eduardo Ballinas (Ballinas) owned/leased the aforesaid real properties, owned the subject pit bull, knowingly permitted the subject pit bull to be harbored at the aforesaid real properties and knew or should have known that the subject pit bull had vicious propensities. Plaintiff further alleges that the subject incident occurred as a result of the "negligence, carelessness and recklessness of

the defendants in their respective ownership, harboring, control, failure to control, failure to restrain, improper training and failure to supervise the [pit bull] and without any negligence on the part of plaintiff...contributing thereto” (complaint at ¶ 78, NYSCEF Doc No. 31).

Plaintiff commenced this action with the filing of a summons and complaint on December 5, 2023 (*see* NYSCEF Doc No. 1). On January 5, 2024, plaintiff filed an affidavit of service, purportedly indicating that on December 19, 2023, it had effectuated service of process of the summons and complaint upon defendant Elite in accordance with section 306 of the Business Corporation Law (BCL) by service upon an authorized agent of the Secretary of State (*see* NYSCEF Doc No. 4). On January 5, 2024, plaintiff filed another affidavit of service, purportedly indicating that on December 19, 2023, it also had effectuated service of process of the summons and complaint upon defendant Bryn Mawr in accordance with section 306 of the BCL by service upon an authorized agent of the Secretary of State (*see* NYSCEF Doc No. 5). On January 5, 2024, plaintiff filed another affidavit of service, purportedly indicating that on December 19, 2023, it also had effectuated service of process of the summons and complaint upon defendant Palmer 468 in accordance with section 306 of the BCL by service upon an authorized agent of the Secretary of State (*see* NYSCEF Doc No. 2). On January 5, 2024, plaintiff filed another affidavit of service, purportedly indicating that on December 19, 2023, it also had effectuated service of process of the summons and complaint upon defendant Palmer Road in accordance with section 303 of the Limited Liability Company Law (LLC) by service upon an authorized agent of the Secretary of State (*see* NYSCEF Doc No. 3). On January 9, 2024, plaintiff filed another affidavit of service, purportedly indicating that on December 14, 2023, it also had effectuated service of process of the summons and complaint upon defendant Ballinas at his dwelling place in accordance with CPLR 308 (2) by service upon a “Jane Doe” name refused, and by subsequently mailing a copy of the initiating papers to Ballinas at his place of dwelling on December 15, 2023 (*see* NYSCEF Doc No. 7).

When defendants failed to appear or otherwise answer the complaint, plaintiff moved (sequence no. 1) for an order, pursuant to CPLR 3215, granting leave to enter a default judgment against defendants. The motion was unopposed. By decision and order dated August 20, 2024 (Prior Order), the court, *inter alia*, granted that portion of the motion which sought leave to enter a default judgment against defendants Palmer Road and Ballinas (*see* NYSCEF Doc No. 25). As to the remaining defendants, the court denied the motion without prejudice upon the ground that the additional mailing of the summons and complaint to these defendants was not accompanied by a notice to them that service had been previously effectuated upon them pursuant to paragraph (b) of section 306 of the BCL (*see* CPLR 3215 [g][4][ii]). The instant motion ensued. The motion is, again, unopposed.

On a motion for leave to enter a default judgment pursuant to CPLR 3215, a plaintiff must submit proof of proper service of the summons and complaint, proof of the facts constituting the claim and proof of the defendant’s default in answering or appearing (*see*

CPLR 3215 [f]; *Rattner v Fessler*, 202 AD3d 1011, 1014 [2d Dept 2022]; *Global Liberty Ins. Co. v Surgery Ctr. Of Oradell, LLC*, 153 AD3d 606, 606 [2d Dept 2017]). In addition, when a default judgment based upon nonappearance is sought against a domestic or authorized foreign corporation that has been served pursuant to paragraph (b) of section 306 of the BCL, additional notice is required to be given (*see* CPLR 3215 [g][4][i-ii]). “CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action” (*Joosten v Gale*, 129 AD2d 531, 535 [1st Dept 1987]; *see Resnick v Lebovitz*, 28 AD3d 533, 534 [2d Dept 2006]). “The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts” (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]; *see Knudsen v Green Mach. Landscaping, Inc.*, 223 AD3d 792, 793 [2d Dept 2024]). Moreover, “[a] defendant who has defaulted in answering admits all traversable allegations in the complaint, including the basic allegation of liability” (*U.S. Bank N.A. v Gilchrist*, 172 AD3d 1425, 1427 [2d Dept 2019] [internal quotation marks omitted]).

Here, the evidence tendered including, the default letters dated March 8, 2024, which were mailed to the corporate defendants, Elite, Bryn Mawr and Palmer 468, and which included the summons and complaint and the affidavit of service establishing that they were each served with the summons and complaint pursuant to section 306 of the BCL, reflect plaintiff’s compliance with CPLR 3215 (g)(4)(i) (*cf. Burlington Ins. Co. v Aisyrk Co., Inc.*, 153 AD3d 777, 778 [2d Dept 2017]). “Under these circumstances,...the lack of language in the [March 8, 2024 default] letter[s] stating that service had previously been made pursuant to Business Corporation Law § 306(b), do not provide a basis for denying plaintiff’s motion” (*Walley v Leatherstocking Healthcare, LLC*, 79 AD3d 1236, 1237-1238 [3d Dept 2010]; *see Lopez v Trucking & Stratford*, 299 AD2d 187, 187 [1st Dept 2002]). In addition, as explained in the Prior Order, plaintiff established proof of the facts constituting her negligence claim through her affirmation dated April 30, 2024, as well as proof of defendants’ default in appearing in this action (*see* CPLR 3215 [f]). Accordingly, the motion for leave to enter a default judgment against the remaining corporate defendants on the issue of liability on the negligence claim is granted. An inquest on the issue of damages shall be held.

Based on the foregoing, it is hereby:

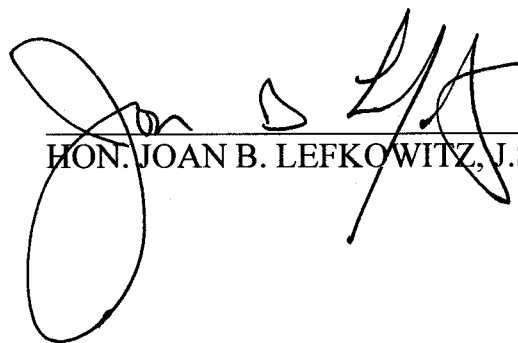
ORDERED that the motion is granted, and plaintiff is awarded a default judgment on the issue of liability on the negligence claim against the defendants, Elite Car Wash & Professional Detailing Corp., Bryn Mawr Car and Truck Detailing Inc. and Palmer 468 Inc., and an inquest shall be held on the issue of damages; and it is further

ORDERED that within ten (10) days from the date hereof, plaintiff shall serve a copy of this order with notice of entry upon defendants by certified mailing, return receipt

requested, and plaintiff shall file proof of such service to the NYSCEF docket within five (5) days thereafter.

This matter is presently scheduled for an inquest scheduling conference on October 15, 2024, at 2:00 p.m. in the Trial Assignment Part, Courtroom 1200 of the Supreme Court, Westchester County, 111 Dr. Martin Luther King Jr. Boulevard, White Plains, New York 10601.

Dated: White Plains, New York
September 20, 2024



HON. JOAN B. LEFKOWITZ, J.S.C.