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| <b>Perez v Durgaj Prop. Corp.</b>                                                                                                                                                                                              |
| 2024 NY Slip Op 35674(U)                                                                                                                                                                                                       |
| June 5, 2024                                                                                                                                                                                                                   |
| Supreme Court, Bronx County                                                                                                                                                                                                    |
| Docket Number: Index No. 816811/2022E                                                                                                                                                                                          |
| Judge: Kim Adair Wilson                                                                                                                                                                                                        |
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX, NEW YORK: Part IA-12

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PHILLIP PEREZ,

Plaintiff,

**-against-**

DURGAJ PROPERTIES CORP., 225 WEST  
KINGSBRIDGE LLC, 235 WEST KINGSBRIDGE ROAD  
LLC and 229 WEST KINGSBRIDGE LLC,  
Defendants.

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**Kim Adair Wilson, J.:**

**DECISION AND ORDER**

**Index No. 816811/2022E**

**Motion Seq. #: 001**

**HON. KIM ADAIR WILSON  
J.S.C.**

“**NOTICE OF MOTION**” dated and filed September 26 and September 27, 2023, respectively, by one Blake Goldfarb, Esq., (Harris, Keenan & Goldfarb PLLC), counsel for named plaintiff, seeking an “Order pursuant to CPLR §3215(a)(b), directing that a Default Judgment be entered against defendant 235 WEST KINGBRIDGE ROAD LLC., or in the alternative, setting this matter down for an inquest in favor of the Plaintiff, assessing damages in a sum certain or for a sum which can, by computation, be made certain,” is submitted without opposition, and is decided as set forth below.

By filing a Summons and Verified Complaint on November 9, 2022, plaintiff Phillip Perez commenced the underlying action against the defendants Durgaj Properties Corp., 225 West Kingsbridge LLC, 235 West Kingsbridge Road LLC and 229 West Kingsbridge LLC, seeking monetary damages for personal injuries allegedly sustained on or about January 3, 2022, near the premises located at 225-229 West Kingsbridge Road, Bronx, New York. Specifically, the Complaint alleges that the plaintiff was walking on the sidewalk adjacent to the aforementioned property when he “was caused to fall and be seriously injured” due to the allegedly defective sidewalk. Plaintiff further claims that defendants Durgaj Properties Corp (“Durgaj”), 225 West Kingsbridge LLC, 235 West Kingsbridge Road LLC, and 229 West Kingsbridge LLC owned and controlled the aforementioned premises and sidewalk, and that their allegedly negligent maintenance thereof proximately caused plaintiff’s serious and permanent injuries, as well as his associated economic damages. On

April 24, 2023, defendant Durgaj its “VERIFIED ANSWER” (NYSCEF Doc 12) to plaintiff’s summons and complaint, denying all allegations, raising fifteen affirmative defenses and two cross-claims against co-defendants 225 West Kingsbridge LLC, 235 West Kingsbridge Road LLC, and 229 West Kingsbridge LLC. On August 28, 2023, defendants 225 West Kingsbridge LLC and 229 West Kingsbridge LLC filed their “VERIFIED ANSWER” (NYSCEF Doc 17), denying all allegations, raising fourteen affirmative defenses, and raising a cross-claim against defendant 235 West Kingsbridge Road LLC.

Now, in the instant motion, plaintiff seeks an Order directing that a default judgment be entered against defendant, 235 West Kingsbridge Road LLC, only, for failing to appear in the action (CPLR 3215[a]), and that the matter be referred, presumed at a later date, for an inquest to assess damages (CPLR 3215[b]).

CPLR 3215(a) provides, in pertinent part, that “[w]hen 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.” CPLR 3215(f) requires the movant for a default judgment to file, by affidavit, proof of service of the summons and complaint and, of the facts constituting the claim. Under CPLR 3215 (g)(4), “[w]hen a default judgment based upon non-appearance is sought against a domestic or authorized foreign corporation . . . an affidavit shall be submitted that an additional service of the summons by first class mail has been made upon the defendant corporation at its last known address at least twenty days before the entry of judgment.” Notice requirements under CPLR 3215(g)(4) are also applicable when defendant is a limited liability company. *see Crespo v. A.D.A. Mgmt.*, 292 A.D.2d 5 (1st Dept 2002).

Plaintiff has filed an “AFFIRMATION IN SUPPORT” (NYSCEF Doc 25), dated and filed September 26 and September 27, 2023, respectively, wherein plaintiff’s aforementioned counsel elaborates on the preceding facts, and asserts that, due to defendant 235 West Kingsbridge Road LLC’s failure to timely respond to the allegations put forth, plaintiff is entitled to a judgment by default. Plaintiff’s “AFFIDAVIT OF MERIT” (NYSCEF Doc 29), notarized and filed September 13, and September 27, 2023, respectively, and signed by the named plaintiff, can be used to certify the facts constituting the claim (CPLR 3215[f]).

Therein, plaintiff verifies that, as a result of the above-described incident, he purportedly “suffered serious personal injuries including but not limited to left foot and ankle injuries requiring surgery.”

In further support of the instant motion, plaintiff annexed the Affidavit of Service (NYSCEF Doc 4), wherein the process server attests that they effected service of the “Summons and Verified Complaint” upon the defaulting defendant, 235 West Kingsbridge Road LLC, on November 11, 2022 by personally delivering same to Paul Durgaj, president and owner of 235 West Kingsbridge Road LLC, at its business address, 170 Nelson Road, Scarsdale, New York 10583. According to the “AFFIDAVIT OF SERVICE – SECRETARY OF STATE” (NYSCEF Doc 10), the process server attests that they effected service of the “Summons and Verified Complaint” upon the defaulting defendant, 235 West Kingsbridge Road LLC by way of the Secretary of State on November 22, 2022, in compliance with Limited Liability Company Law § 303. In the “AFFIDAVIT OF ADDITIONAL MAILING” (NYSCEF Doc. 28), it is asserted that on July 7, 2023, plaintiff’s counsel served the defendant 235 West Kingsbridge Road LLC with a default letter and the Summons and Verified Complaint via first class mail and Certified Mail to its above-listed address. According to the “AFFIDAVIT OF SERVICE” (NYSCEF Doc 30), the “Notice of Motion” and “Affirmation in Support” were served upon defendant 235 West Kingsbridge Road LLC by mailing the same in a sealed envelope with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York at the above listed address on September 27, 2023.

Upon review and the analysis of statutory authority, relevant case law, the papers submitted and the record, this Court determines that the plaintiff has proffered the requisite proof necessary for the entry of a default judgment against the defendant 235 West Kingsbridge Road LLC. Therefore, the plaintiffs’ motion is **GRANTED** as stated herein.

Accordingly, it is hereby

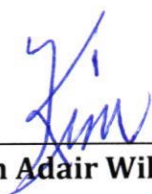
**ORDERED, that the Clerk of the Court is directed to enter a default judgment against defendant 235 West Kingsbridge Road LLC, only. The assessment of damages shall take place at trial or at the disposition of the cause(s) of action against Durgaj**

**Properties Corp, 225 West Kingsbridge LLC, and 229 West Kingsbridge LLC, the non-defaulting defendants; and it is further**

**ORDERED, that plaintiff/movant is directed to serve a copy of this Order with Notice of Entry upon all parties within thirty (30) days of entry of this Order, and to file proof of service with the Court.**

This constitutes the Decision and Order of this Court.

**Dated: June 5, 2024  
Bronx, New York**

  
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Hon. Kim Adair Wilson, J.S.C.