

Kaufman v Beanhouse LLC

2025 NY Slip Op 32825(U)

August 6, 2025

Supreme Court, New York County

Docket Number: Index No. 159837/2024

Judge: Leslie A. Stroth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

-----X INDEX NO. 159837/2024

MICHAEL KAUFMAN,

06/29/2025,

Plaintiff,

MOTION DATE 07/04/2025

- v -

MOTION SEQ. NO. 001 002

BEANHOUSE LLC, MADAME BONTE CAFE, SPALATO
PROPERTIES INC,

DECISION + ORDER ON
MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for JUDGMENT - DEFAULT

The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

were read on this motion to/for AMEND CAPTION/PLEADINGS

FACTUAL BACKGROUND

This action arises from an alleged incident in which Plaintiff Michael Kaufman slipped and fell on an interior staircase due to a slippery and otherwise defective condition on April 2, 2024 at 318 East 84th Street, New York, New York ("Subject Premises"). Defendants Beanhouse LLC, Madame Bonte Café, and Spalato Properties Inc. are New York business entities that Plaintiff states collectively owned, operated, managed, maintained, and controlled the Subject Premises,

Plaintiff alleges that each Defendant, through its agents and employees, was responsible for the repair, inspection, and supervision of the premises and had a duty to keep the staircase in a safe condition.

Plaintiff contends that on April 2, 2024, he. Plaintiff asserts that Defendants were negligent in the ownership, operation, maintenance, and control of the staircase by allowing a dangerous condition to exist without warning or remedy, and that Defendants had actual or constructive notice of the hazardous condition. Plaintiff alleges that no negligence on his part contributed to the accident.

As a result of the fall, Plaintiff claims to have sustained serious and permanent injuries, incurred medical expenses, and suffered pain, mental anguish, and economic loss.

In Motion Sequence 001, Plaintiff Michael Kaufman moves against Defendant Spalato Properties, Inc. for default judgment pursuant to CPLR 3215(d) for failing to appear or otherwise respond to the Complaint, despite being duly served.

In Motion Sequence 002, Plaintiff Michael Kaufman moves to Amend his Complaint to add an additional Defendant, Thimble Realty Co. as a party to this action pursuant to CPLR 3025(b).

**PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT AGAINST SPALATO
PROPERTIES, INC. (MOTION SEQUENCE 001)**

When a defendant fails to appear or answer, a plaintiff may seek a default judgment against that defendant (CPLR 3215 [a]). “On a motion for leave to enter a default judgment pursuant to CPLR 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting its claim, and proof of the defaulting party's default in answering or appearing” (*Atlantic Cas. Ins. Co. v RJNJ Servs., Inc.*, 89 AD3d 649, 651 [2d Dept 2011]).

Here, Plaintiff submits the summons and complaint, proof of service of the summons and complaint, an affidavit of service of the instant motion. Plaintiff further attaches an affidavit of

merit and deed in support of their motion for default. The attached affidavit of merit states that plaintiff slipped and sustained serious injuries, mirroring the complaint. Plaintiff further attaches a photograph alleging to show that the staircase in the subject premises was defective as a matter of law. “CPLR 3215 does not contemplate that default judgment are to be rubberstamped 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” (*Fedder v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). Further, “the affidavit or verified complaint need only allege enough facts to enable a court to determine that a viable cause of action exists.” (*Woodson v Mendon leasing Corp.*, 100 NY2d 62, 71 [2003]).

Here, the affidavit of merit alleges that the staircase was defective, and that, “upon information and belief, Defendant, SPALATO PROPERTIES INC., owned, operated, maintained, managed, and controlled the subject staircase.” (NYSCEF Doc No. 15 ¶ 5). First, the Court does not find that the statements and photograph sufficiently document proof of the facts constituting the claim, nor that Defendant Spalato Properties, Inc. is definitively liable. Accordingly, Plaintiff has failed to supply sufficient documentation of proof of facts constituting his claim, and as such, Plaintiffs application for default judgment is denied at this juncture.

**PLAINTIFF’S MOTION TO AMEND HIS COMPLAINT TO ADD ADDITIONAL
DEFENDANT THIMBLE REALTY CO. (MOTION SEQUENCE 002)**

Pursuant to CPLR 3025(b), “A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just.” “In general, motions for leave to amend a pleading should be granted unless the proposed amendment is palpably insufficient or patently devoid of merit, or where the delay in seeking the

amendment would cause prejudice or surprise” (*Corwise v. Lefrak Org.*, 93 A.D.3d 754 [2nd Dept 2012]). “Prejudice requires that the [opposing party] has been hindered in the preparation of his case or been prevented from taking some measure in support of his position.” (*RCLA, Inc. v. 50-09 Realty, LLC*, 48 A.D.3d 538, 539, 852 N.Y.S.2d 211 [2d Dept 2008] [*quoting Loomis v. Civetta Corinno Constr. Corp.*, 54 N.Y.2d 18, 23, 444 N.Y.S.2d 571, 429 N.E.2d 90 (1981)]).

In *MBIA Ins.*, the Court held that “on a motion for leave to amend, [a party] need not establish the merit of its proposed new allegations, but simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit” (*MBIA Ins. Corp. v. Greystone & Co.*, 74 A.D.3d 499 [1st Dept 2010]; see also *Cruz v. Brown*, 129 A.D.3d 455 [1st Dept 2015]).

Given the early stage of litigation, the lack of opposition by the current or proposed Defendants the Court grants Plaintiff’s motion to add Thimble Realty Co. as a Defendant.

Accordingly; it is hereby

ORDERED that Plaintiff Michael Kaufman’s motion for default judgement against Defendant Spalato Properties Inc. (Motion Sequence 001) is denied without prejudice to renew; and it is further

ORDERED that Plaintiff’s Motion 002 is granted, and Plaintiff is directed to filed the proposed additional Defendant as well as counsel for the existing Defendants with the amended Summons and Complaint within 21 days of the date of this Order and all Defendants shall have 30 days thereafter to interpose an answer; and it is further

ORDERED that the caption shall be maintained as follows:

-----X
MICHAEL KAUFMAN
Plaintiff, Index No.: 159837/2024
-against-
BEANHOUSE LLC, MADAME BONTE CAFÉ, SPALATO
PROPERTIES INC and THIMBLE REALTY CO., LLC,
Defendants.

-----X
ORDERED that the movant shall serve a copy of this Order upon the County Clerk
within 14 days of this Order.

The foregoing constitutes the decision and order of the Court.

8/6/2025
DATE

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION **J.S.C.**
 GRANTED GRANTED IN PART OTHER
APPLICATION: SETTLE ORDER SUBMIT ORDER
CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

Leslie A. Stroth
HON. LESLIE A. STROTH