

Doe v Archdiocese of N.Y.

2025 NY Slip Op 33430(U)

September 12, 2025

Supreme Court, New York County

Docket Number: Index No. 151974/2022

Judge: Judy H. Kim

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. JUDY H. KIM PART 04

Justice

-----X

JANE DOE, AND JOHN DOE,
Plaintiffs,

- v -

ARCHDIOCESE OF NEW YORK, AND OUR LADY OF
LOURDES CHURCH,

Defendants.

-----X

ARCHDIOCESE OF NEW YORK, AND OUR LADY OF
LOURDES CHURCH,

Third-Party Plaintiffs,

-against-

CRAIG ELLIS,

Third-Party Defendant.

-----X

ARCHDIOCESE OF NEW YORK, AND OUR LADY OF
LOURDES CHURCH,

Second Third-Party Plaintiffs,

-against-

CRAIG ELLIS,

Second Third-Party Defendant.

-----X

INDEX NO. 151974/2022
MOTION DATE 05/20/2025
MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595442/2022

Second Third-Party
Index No. 595104/2025

The following e-filed documents, listed by NYSCEF document number (Motion 004) 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78

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

Upon the foregoing documents, the Archdiocese of New York and Our Lady of Lourdes Church's motion for a default judgment is granted, in part, to the extent set forth below.

This action arises from the alleged sexual assault and battery of plaintiff, Jane Doe, which took place on the premises of defendant Our Lady of Lourdes Church (the “Church”), a church operating under the direction and control of defendant Archdiocese of New York. The complaint alleges, in relevant part, that on January 30, 2019, plaintiff entered the Church upon noticing the lights were off and the door was open and was subsequently attacked by third-party defendant Craig Ellis, because of defendants’ negligence in failing to provide proper security for the premises (NYSCEF Doc No. 1, complaint at 1, 3-4).

On May 25, 2022, defendants commenced a third-party action against Ellis, asserting claims for contribution and common-law indemnification (NYSCEF Doc No. 10). After failing to serve the third-party summons and complaint on Ellis within the statutory deadline, defendants commenced a second third-party action against him on January 28, 2025, asserting the same claims (NYSCEF Doc No. 51). Defendants now move, pursuant to CPLR 3215, for an order granting it a default judgment against Ellis on its second third-party complaint. The motion is unopposed.

DISCUSSION

Defendants’ motion is granted, in part. To establish their entitlement to a default judgment pursuant to CPLR 3215, defendants must submit proof of: (1) its service of the summons and complaint on Ellis; (2) the facts constituting the claim; and (3) Ellis’s default in answering or appearing (*see Gordon Law Firm, P.C. v Premier DNA Corp.*, 165 NYS3d 691 [1st Dept 2022]). “CPLR §3215 does not contemplate that default judgments are to be rubberstamped once jurisdiction and a failure to appear has 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” (*Feffer v Malpeso*, 210 AD2d 60 [1st Dept 1994]). The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts” (*id.*).

Defendants have established proper service of the summons and complaint on Ellis, currently a patient at Mid-Hudson Forensic Psychiatric Center, pursuant to CPLR 308 and 14 NYCRR §22.2, by personal service in the manner directed by this Court (NYSCEF Doc No. 55, January 30, 2025 order). Defendants have also established Ellis’s non-military service through the “Affirmation of Military Investigation” by its counsel, Jesse M. Freeman, Esq. (NYSCEF Doc No. 62), and his default (NYSCEF Doc No. 63, Dempsey affirmation at 7).

Defendants have also submitted proof of the facts constituting their contribution claim. “[C]ontribution is available where two or more tortfeasors combine to cause an injury and is determined in accordance with the relative culpability of each person” (*Godoy v Abamaster of Miami, Inc.*, 302 AD2d 57, 61 [2d Dept 2003] [internal citations and quotations omitted]). Here, defendants have established that Ellis’s negligence was a contributing factor to the assault on plaintiff through their submission of a copy of Ellis’s criminal indictment from the Supreme Court of New York, New York County, Criminal Term (NYSCEF Doc No. 67, indictment), the affidavit of Church employee Father Gilberto Angel attesting that he saw Ellis “fleeing” from the church on the night of the incident (NYSCEF Doc No. 61, Angel aff at 3), and plaintiff’s deposition testimony that Ellis assaulted her (NYSCEF Doc No. 73, Jane Doe tr at 187) (*see Flagg v Doe*, 2023 WL 8000378 [Sup Ct, NY County 2023]). Accordingly, defendants’ motion for a default judgment on their contribution claim against Ellis is granted as to liability.

The motion is denied as to defendants’ indemnification claim, however. To establish a claim for common-law indemnification, the party seeking indemnity must prove “that the proposed indemnitor was guilty of some negligence that contributed to the causation of the accident for which the indemnitee was held liable to the injured party by virtue of some obligation imposed by

law” and, furthermore, “that [the indemnitee] was not guilty of any negligence beyond the statutory liability” (*Correia v Professional Data Mgt., Inc.*, 259 AD2d 60, 65 [1st Dept 1999])

While defendants have satisfied the first of these requirements through proof that Ellis assaulted plaintiff (*see Flagg v Doe*, 2023 WL 8000378 [Sup Ct, NY County 2023]), they have not satisfied the second requirement, insofar as it remains an open question whether they were also negligent. “A landowner or landlord, who holds its land open to the public, is under a legal duty to exercise reasonable care under the circumstances to maintain the premises in a reasonably safe condition. The duty includes taking minimal security precautions against reasonably foreseeable criminal acts by third parties” (*In re World Trade Ctr. Bombing Litig.*, 3 Misc 3d 440, 467 [Sup Ct 2004] [internal citations omitted]). While this duty “does not require the landlord to become an insurer of its tenants’ and invitees’ safety,” it nevertheless “imposes a minimum level of care on landlords who ‘know or have reason to know that there is a likelihood that third parties may endanger the safety of those lawfully on the premises’” (*id.*). On this motion, defendants have not submitted any evidence to establish that Ellis’s acts were unforeseeable or, if they were foreseeable, that defendants exercised reasonable care under the circumstances. Accordingly, they have not established their entitlement to a default judgment on this claim (*see Martins v Little 40 Worth Assoc., Inc.*, 72 AD3d 483 [1st Dept 2010] [Building owner and managing agent not entitled to common-law indemnification from contractor on summary judgment where they failed to establish freedom from negligence]).

In light of the foregoing, it is

ORDERED that the Archdiocese of New York and Our Lady of Lourdes Church’s motion for a default judgment as to their contribution claim against Craig Ellis is granted as to liability; and it is further

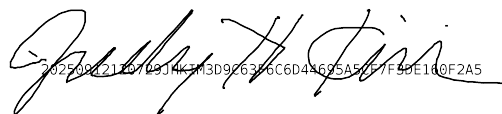
ORDERED that all issues regarding the apportionment of damages between Ellis and the Archdiocese of New York and Our Lady of Lourdes Church shall be determined at inquest to be held at the time of trial; and it is further

ORDERD that the Archdiocese of New York and Our Lady of Lourdes Church’s motion for a default judgment as to their indemnification claim against Craig Ellis is denied; and it is further

ORDERED that defendants shall, within twenty days from the date of this decision and order, serve a copy of this decision and order with notice of entry upon plaintiff and Craig Ellis and upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website).

This constitutes the decision and order of the Court.



00250002100709014030926386C6D48625A5077F58E100F2A5

9/12/2025

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE