

Goldman v All Counties Snow Removal Corp.

2017 NY Slip Op 31859(U)

August 17, 2017

Supreme Court, New York County

Docket Number: 155108/2016

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. KATHRYN E. FREED, J.S.C.
Justice

PART 2

-----X

MICHAEL GOLDMAN and SJOERD DOTING,
Plaintiff,

INDEX NO. 155108/2016

MOTION DATE _____

- v -

MOTION SEQ. NO. 001

ALL COUNTIES SNOW REMOVAL CORP.,
Defendant.

DECISION AND ORDER

ALL COUNTIES SNOW REMOVAL CORP,
Third-Party Plaintiff

-v-

UNITED RECONSTRUCTION SERVICES,
Third-Party Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 20

were read on this application to/for Default Judgment

**Upon the foregoing documents, it is
ordered that the motion is **denied with leave to renew upon service of proper papers.****

In this personal injury action, third-party plaintiff All Counties Snow Removal Corp. (“ACSR”) moves, pursuant to CPLR 3215, for a default judgment against third-party defendant United Reconstruction Services, Inc. (“URS”). URS does not oppose the motion. After a review of the motion papers, as well as the relevant statutes and case law, the motion is **denied with leave to renew upon service of proper papers.**

FACTUAL AND PROCEDURAL BACKGROUND

This action arises from an incident on January 22, 2014 in which plaintiff Michael Goldman was allegedly injured when he slipped and fell on premises allegedly owned and/or operated by defendant/third-party plaintiff All Counties Snow Removal Corp. (“ACSR”). NYSCEF Doc. 1.¹ Plaintiff Sjoerd Doting, Goldman’s wife, asserts a claim for loss of consortium. ACSR joined issue by service of its answer, filed on August 15, 2016. Doc. 3.

On March 10, 2017, ACSR filed a third-party complaint with this Court asserting claims against URS for contribution, contractual and common-law indemnification, and breach of contract to procure insurance. Doc. 4. Although

¹ Unless otherwise noted, all references are to documents filed with NYSCEF in connection with this matter.

URS was properly served with the third-party summons and complaint via the Secretary of State (Doc. 7), it has failed to answer. See Yoon Aff. In Supp., at par. 14.

LEGAL CONCLUSIONS

CPLR 3215(a) provides, in pertinent part, that “[w]hen a defendant has failed to appear, plead or proceed to trial..., the plaintiff may seek a default judgment against him.” It is well settled that “[o]n 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 the 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).

This Court denies the motion because plaintiff failed to submit sufficient “proof of the facts constituting the claim.” CPLR 3215 (f); *see Manhattan Telecom. Corp. v H & A Locksmith, Inc.*, 21 NY3d 200, 202 (2013). It is error to issue a default judgment “without a complaint verified by someone or an affidavit executed by a party with personal knowledge of the merits of the claim.” *Beltre v Babu*, 32 AD3d 722, 723 (1st Dept 2006); *see Manhattan Telecom. Corp. v H & A Locksmith, Inc.*, 21 NY3d at 202; *Mejia-Ortiz v Inoa*, 71 AD3d 517 (1st Dept 2010). Here,


since the third-party complaint is not verified and ACSR failed to submit an affidavit of an individual with knowledge of the facts giving rise to the third-party claim, there is simply no evidentiary basis on which to permit this Court to issue a default judgment. See *Mejia-Ortiz v Inoa*, 71AD3d at 517; *Beltre v Babu*, 32 AD3d at 723.

Therefore, in accordance with the foregoing, it is hereby:

ORDERED that the motion by third-party plaintiff All Counties Snow Removal Corp. is denied with leave to renew upon the submission of proper papers; and it is further,

ORDERED that this constitutes the decision and order of this Court.

HON. KATHRYN FREED
JUSTICE OF SUPREME COURT



HON. KATHRYN E. FREED, J.S.C.

8/17/2017
DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

- CASE DISPOSED
- GRANTED
- SETTLE ORDER
- DO NOT POST

DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

REFERENCE