

Ehrlich v Lawrence Props., Inc.
2018 NY Slip Op 30011(U)
January 3, 2018
Supreme Court, New York County
Docket Number: 158980/2016
Judge: Kathryn E. Freed
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. KATHRYN E. FREED

PART 2

Justice

-----X

ROBIN EHRLICH
Plaintiff,

INDEX NO. 158980/2016

- v -

LAWRENCE PROPERTIES, INC.,
Defendant.

MOTION SEQ. NO. 001

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document numbers 4, 5, 6, 7, 8, 9, 10, 11, 12 were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, it is ordered that the motion is granted.

In this personal injury action, plaintiff Robin Ehrlich seeks an order, pursuant to CPLR 3215(a), directing that a default judgment be entered against defendant Lawrence Properties, Inc. and that, upon such default, an inquest be conducted to determine her damages. There is no opposition to the motion. After a review of the papers presented, all relevant statutes and case law, this Court **grants** the motion.

Plaintiff commenced this action by filing a summons and verified complaint on October 24, 2016. Doc. 1.¹ In her verified complaint, plaintiff alleges that she was injured on August 11, 2014 due to a defective window at 401 East 74th Street, New York, New York. Id. She asserts that the incident occurred due to the negligence of defendant, which owned and/or managed the premises where the alleged incident occurred. Id.

¹ All references are to the documents filed by plaintiff with NYSCEF.

Plaintiff served defendant with process via the Secretary of State on October 26, 2016. Doc. 2. Plaintiff served defendant with an additional copy of the summons and complaint pursuant to CPLR 3215(g)(4)(ii) on August 24, 2017. Docs. 8-9.

On August 25, 2017, plaintiff filed the instant motion seeking a default judgment against defendant pursuant to CPLR 3215(a). In support of her motion, plaintiff submits an attorney affirmation, a copy of the summons and complaint, and the affidavits of service on defendant. In his affirmation in support, plaintiff's counsel avers that defendant has failed to answer or otherwise appear in this action. There has been no opposition to the motion.

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." *See Atlantic Cas. Ins. Co. v. RJNJ Servs. Inc.*, 89 A.D.3d 649, 651 (2d Dept. 2011). Moreover, a default in answering the complaint is deemed to be an admission of all factual statements contained in the complaint and all reasonable inferences that flow from them. *See Woodson v. Mendon Leasing Corp.*, 100 N.Y.2d 63 (2003).

Here, plaintiff has submitted a verified summons and complaint attesting to the facts constituting the claim (*see* CPLR 3215[f]), an affidavit of service establishing defendant was served with process, proof of service of the summons and complaint pursuant to CPLR 3215(g), and proof that the defendant has failed to answer the complaint. Thus, plaintiff is entitled to a default judgment against defendant and this matter will be set down for an inquest as to the amount of her damages.

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

ORDERED that the motion by plaintiff Robin Ehrlich for a default judgment against defendant Lawrence Properties, Inc. is granted; and it is further

ORDERED that this matter is to be set down for an inquest in favor of plaintiff Robin Ehrlich against defendant Lawrence Properties, Inc.; and it is further

ORDERED that a Special Referee shall be designated to hear and report the amount of monetary damages due to plaintiff; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119 M, 646-386-3028 or spref@courts.state.ny.us) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this Court at www.nycourts.gov/suptctmanh at the "Local Rules" link), shall assign this matter to an available Special Referee to determine as specified above; and it is further

ORDERED that plaintiff's counsel shall serve a copy of this order with notice of entry on defendant and the Trial Support Office at 60 Centre Street, Room 158 within twenty days after this order is uploaded to NYSCEF and plaintiff's counsel shall, after thirty days from service of those papers, submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (which can be accessed at <http://www.nycourts.gov/courts/ljd/suptctmanh/refpart-infosheet-10-09.pdf>) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referee's Part; and it is further

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4318) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and that the parties shall appear for the reference hearing, including with all such witnesses and evidence as they may seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referee's Part in accordance with the Rules of that Part; and it is further

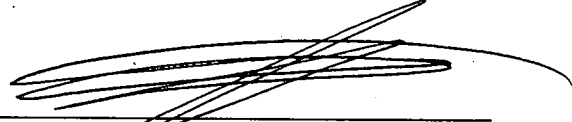
ORDERED that, except as otherwise directed by the assigned Special Referee for good cause shown, the inquest shall proceed from day to day until completion; and it is further

ORDERED that within 14 days of the filing of this order on the NYSCEF system, plaintiff shall file a note of issue and pay the appropriate fees therefor; and it is further

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

1/3/2018

DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
DO NOT POST

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE