

Zuniga v WWI Contr., Corp.

2018 NY Slip Op 30283(U)

February 14, 2018

Supreme Court, New York County

Docket Number: 156896/2017

Judge: Robert D. Kalish

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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. Robert D. KALISH
Justice

PART 29

RUBEN ZUNIGA,

INDEX NO. 156896/2017

Plaintiff,

MOTION DATE 1/3/18

- v -

MOTION SEQ. NO. 001

WWI CONTRACTING, CORP.,

Defendant.

The following papers, numbered 4-12, were read on this motion for entry of a default judgment.

Notice of Motion - Affirmation in Support - Aff of Merit - Exhibits A-C - Aff of Service - RJ1 - Aff of Service | Nos. 4-12

Motion by Plaintiff Ruben Zuniga ("Zuniga") pursuant to CPLR 3215 for entry of a default judgment against Defendant WWI Contracting, Corp. ("WWI") is granted, there being no opposition submitted.

BACKGROUND

Zuniga commenced the instant action against WWI on August 1, 2017, by e-filing a summons and verified complaint. Zuniga was allegedly engaged in construction work at 156 Tillary Street, Brooklyn, New York 11201 (the "Premises") on June 19, 2017. Zuniga alleges that, on June 19, 2017, WWI was the general contractor for work, labor, and/or services performed at the Premises on June 19, 2017. Zuniga further alleges that he was injured while engaged in construction work at the Premises on June 19, 2017, when he tripped and fell as a result of a tripping hazard due to the negligence of WWI. Zuniga further alleges that WWI "maintained a principal place of business in the County of New York, City and State of New York." (Lanza affirmation, exhibit A [Complaint], ¶ 5.) The Complaint states two causes of action, for common-law negligence and for violations of Labor Law §§ 200, 240 (1), and 241 (6).

Zuniga alleges that process was served upon WWI on August 11, 2017, by means of the Secretary of State pursuant to Business Corporation Law § 306.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Zuniga further alleges that, on September 25, 2017, his counsel mailed to WWI a copy of the summons and verified complaint, a copy of the affidavit of service of process, a copy of the certified mail label, and a letter indicating that WWI had not answered and was currently in default. The address stated for WWI on the letter was "28-24 Steinway St. Suite 224, Astoria, New York 11103" (the "Queens Address"). (Lanza affirmation, exhibit C, at 1.) Zuniga further alleges that the instant motion was served on WWI on December 11, 2017. (NY St Cts Elec Filing [NYSCEF] Doc No 12.)

As WWI has not answered or appeared in this action, Zuniga now moves for entry of a default judgment against it.

DISCUSSION

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." On a motion for a default judgment under CPLR 3215 based upon a failure to answer the complaint, a plaintiff demonstrates entitlement to a default judgment against a defendant by submitting: (1) proof of service of the summons and complaint; (2) proof of the facts constituting its claim; and (3) proof of the defendant's default in answering or appearing. (See CPLR 3215 [f]; *Matone v Sycamore Realty Corp.*, 50 AD3d 978 [2d Dept 2008]; *Allstate Ins. Co. v Austin*, 48 AD3d 720 [2d Dept 2008]; see also *Liberty County Mut. v Ave. I Med., P.C.*, 129 AD3d 783 [2d Dept 2015].)

CPLR 3215 (g) (4) provides, in pertinent part, that

- (i) When a default judgment based upon non-appearance is sought against a domestic or authorized foreign corporation which has been served pursuant to [Business Corporation Law § 306], 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.
- (ii) The additional service of the summons by mail . . . shall be accompanied by a notice to the corporation that service is being made or has been made pursuant to that provision. An affidavit of mailing pursuant to this paragraph shall be executed by the person mailing the summons and shall be filed with the judgment. Where there has been

compliance with the requirements of this paragraph, failure of the defendant corporation to receive the additional service of summons and notice provided for by this paragraph shall not preclude the entry of default judgment.

Here, Zuniga has established presumptively valid proof of service of process on WWI. Zuniga has also established that WWI has not answered or appeared. Zuniga has further shown prima facie proof of the facts constituting his claim for the purposes of an unopposed motion for entry of a default judgment by means of his verified complaint and affidavit of merit.

The Court notes that the verified complaint indicates that WWI has a principal place of business in New York County. The Court further notes that the September 25, 2017 default letter was addressed to WWI in Queens County. The Court takes judicial notice that the New York State Division of Corporations Entity Information database indicates that WWI's "[a]ddress to which [the Department of State] will mail process if accepted on behalf of the entity" is the Queens Address. As such, the Court will disregard the allegation in ¶ 5 of the Complaint as to WWI having a principal place of business in New York County.

The Court notes further that Zuniga has not included in the instant motion an "affidavit of mailing . . . executed by the person mailing the summons" regarding the initial mailing of the September 25, 2017 letter pursuant to CPLR 3215 (g) (4) (ii). Nevertheless, Zuniga has included an affidavit of mailing, dated December 11, 2017, of the instant motion, which included the September 25, 2017 letter as an exhibit. As such, the December 11, 2017 affidavit (NYSCEF Doc No 12) fulfills the CPLR 3215 (g) (4) (ii) requirement and "shall be filed with the judgment."

CONCLUSION

Accordingly, it is

ORDERED that the motion by Plaintiff Ruben Zuniga pursuant to CPLR 3215 for entry of a default judgment against Defendant WWI Contracting, Corp. is granted, there being no opposition submitted; and it is further

ORDERED that Plaintiff shall within 20 days of the date of this order serve a copy of this order with notice of entry upon Defendant, and upon the County Clerk (Room 141B); and it is further

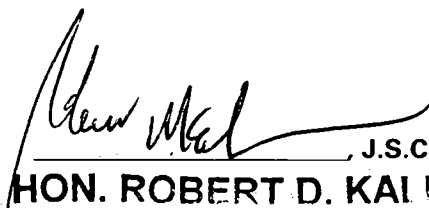
ORDERED that the Clerk is directed to enter judgment in favor of Plaintiff as to liability on the first and second causes of action; and it is further

ORDERED that, on or before March 10, 2018, Plaintiff shall serve a copy of this order upon, and file a note of issue and statement of readiness with, the Trial Support Office (Room 158M); and it is further

ORDERED that, upon said filing and the payment of the appropriate fee, the Clerk of the Trial Support Office shall place this matter upon the trial calendar for an inquest as to damages.

The foregoing constitutes the decision and order of the Court.

Dated: February 14, 2018
New York, New York


_____, J.S.C.
HON. ROBERT D. KALISH

- 1. Check one:.....
- 2. Check if appropriate:..... MOTION IS:
- 3. Check if appropriate:.....

- CASE DISPOSED NON-FINAL DISPOSITION
- GRANTED DENIED GRANTED IN PART OTHER
- SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE