

Basilio v Carlo Lizza & Sons Paving, Inc.
2018 NY Slip Op 31211(U)
June 14, 2018
Supreme Court, New York County
Docket Number: 159724/2017
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 IAS MOTION 2

Justice

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MARBIN URENA BASILIO,

Plaintiff,

- v -

CARLO LIZZA & SONS PAVING, INC. and CONSOLIDATED
EDISON, INC.,

Defendants.

INDEX NO. 159724/2017

MOTION DATE 05/14/2018

MOTION SEQ. NO. 001

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18

were read on this motion to/for DEFAULT JUDGMENT

Upon the foregoing documents, it is Ordered that the within motion is granted without opposition.

The underlying action was brought to recover damages for personal injuries alleged to have been sustained by plaintiff Marbin Urena Basilio on or about October 4, 2016 while riding his bicycle on Henry Street near the intersection of Henry and Montgomery Streets, New York, New York. The accident was allegedly caused by a drop off in the roadway created by the negligence of the defendants.

The underlying action was commenced by the filing of a summons and verified complaint as against defendants Carlo Lizza & Sons Paving, Inc. ("Lizza")

and Consolidated Edison, Inc. (“Con Ed”) on or about October 31, 2017. (Doc. No. 1).¹ Service was effectuated on Lizza via the Secretary of State on January 22, 2018. (Doc. No. 7). The Affidavit of Merit setting forth the facts of the accident was sworn to by plaintiff on or about February 16, 2018. (Doc No. 13). A default letter pursuant to CPLR 3215 containing a copy of the summons and complaint, dated January 11, 2018, was served on Lizza at 42 Yellow Core Road, Syosset, New York (Doc. No. 17). A copy of plaintiff’s Motion for a Default, along with an attorney’s Affirmation and the Affidavit of Merit, was served on Lizza on February 22, 2018. (Doc. No. 18). Plaintiff’s counsel now affirms that defendant Lizza has failed to appear in the instant motion and, pursuant to CPLR 3215 (a) and (b), prays that a default judgment be entered against Lizza (Doc. No. 12).² Annexed to the instant motion are copies of permits from the New York City Department of Transportation (Doc No. 14), which indicate that defendant Lizza was granted permission to do roadway construction at the subject intersection.

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

¹ All references are to the documents filed with NYSCEF in connection with this matter.

² Con Ed filed an answer to the complaint on December 4, 2017. Doc. 3.

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).

Plaintiff has therefore established the facts constituting the claim and plaintiff is entitled to a default judgment against Lizza.

In light of the foregoing, it is hereby:

ORDERED that the motion by plaintiff Marbin Urena Basilio seeking a default judgment against defendant, Carlo Lizza & Sons Paving, Inc. is granted; and it is further,

ORDERED that, following the filing of the note of issue, this matter is to be set down for an inquest in favor of plaintiff Marbin Urena Basilio assessing damages against defendant, Carlo Lizza & Sons Paving, Inc., with said inquest and assessment of damages to take place at the time of trial, or other disposition, of the remaining portion of the action; and it is further,

ORDERED that plaintiff Marbin Urena Basilio shall serve a copy of this order on all parties to this action, and on the Trial Support Office at 60 Centre Street, Room 158; and it is further,

ORDERED that this constitutes the decision of the court.


6/14/2018
DATE

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

APPLICATION: GRANTED DENIED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE


KATHRYN E. FREED, J.S.C.