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| Greenberg v Cipriani 42nd St., LLC |
| 2018 NY Slip Op 31996(U) |
| August 16, 2018 |
| Supreme Court, New York County |
| Docket Number: 158838/2017 |
| 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

-----X INDEX NO. 158838/2017

JEROME GREENBERG,

Plaintiff,

MOTION SEQ. NO. 001

- v -

CIPRIANI 42ND STREET, LLC, GC ALPHA, LLC D/B/A CIPRIANI
DOLCI, SIMONE TERRIM, ZSOLT DUCASI, MIGUEL REYES,
ERKLIANT SULA, and JONATHAN MILLER,

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14,
15, 16, 17, 18, 19, 20

were read on this motion to/for DEFAULT JUDGMENT

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

In this personal injury action, plaintiff Jerome Greenberg moves, pursuant to CPLR 3215,
for a default judgment against defendants Erkliant Sula and Jonathan Miller. After a review of
the motion papers, as well as a review of the relevant statutes and case law, the motion, which is
unopposed, is denied.

FACTUAL BACKGROUND:

This case arises from an incident on November 23, 2016, in which plaintiff Jerome
Greenberg was allegedly injured when a fight broke out between defendants Erkliant Sula
("Sula") and Jonathan Miller ("Miller") at Cipriani Dolce on 42nd Street in Manhattan, which
premises were owned by GC Alpha, LLC d/b/a Cipriani Dolci and rented to Cipriani 42nd Street,

LLC. (Docs. 11 at 2, 12 at 7, 13 at 5–6.) According to plaintiff, Sula and Miller were visibly intoxicated at the time of the altercation. (Doc. 12 at 7.)

On October 3, 2017, plaintiff commenced this personal injury action against defendants by filing a summons and verified complaint alleging negligence, negligent hiring and supervision, and breach of New York’s Dram Shop Act. (Doc. 12.) Process was properly served on defendant Sula on December 7, 2017, and on January 12, 2018. (Doc. 15.) Process was also properly served on defendant Miller on October 9 and 11, 2017. (Doc. 14.) Plaintiff now moves, pursuant to CPLR 3215, for a default judgment against Sula and Miller. (Docs. 10–11.) The motion is unopposed.

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].)

In order to set forth the facts constituting the claim in a motion for default judgment pursuant to CPLR 3215, a party must submit either a complaint verified by a party with personal knowledge of the facts of the case, or an affidavit by such an individual. (*See Mullins v DiLorenzo*, 199 AD2d 218, 219–20 [1st Dept 1993] (default judgment improper in the absence of a verified complaint or an affidavit by plaintiff).) An attorney affirmation will not suffice for this purpose. (*See Mattera v Capric*, 54 AD3d 827, 828 [2d Dept 2008] (attorney affirmation

which is not based on personal knowledge is insufficient proof for default judgment).) It is well settled “that a complaint verified by counsel amounts to no more than an attorney’s affidavit and is insufficient to support entry of judgment pursuant to CPLR 3215.” (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994].)

Here, although plaintiff has submitted proof of service of the summons and complaint (Docs. 14, 15), as well as proof that defendants Sula and Miller defaulted in answering (Doc. 11 at 2–3), plaintiff’s motion must be denied because he has not properly submitted facts constituting the claim. Other than the allegations contained in the complaint verified by plaintiff’s counsel and in the attorney affirmation in support for a default judgment, there are no facts constituting the claim given by plaintiff himself or by someone else with personal knowledge of the same. Therefore, default judgment must be denied.


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

ORDERED that plaintiff Jerome Greenberg’s motion for a default judgment against defendants Erklant Sula and Jonathan Miller is denied, with leave to renew upon proper papers; and it is further

ORDERED that plaintiff is to serve a copy of this order, with notice of entry, on all parties within twenty days hereof; and it is further

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

8/16/2018
DATE


KATHRYN E. FREED, J.S.C.

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| CHECK ONE: | <input type="checkbox"/> | CASE DISPOSED | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION | | |
| APPLICATION: | <input type="checkbox"/> | GRANTED | <input checked="" type="checkbox"/> | DENIED | <input type="checkbox"/> | OTHER |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | SETTLE ORDER | | SUBMIT ORDER | | REFERENCE |
| | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | | FIDUCIARY APPOINTMENT | | |