

Wachtel v Kids U Pleasantville LLC

2018 NY Slip Op 33056(U)

November 30, 2018

Supreme Court, New York County

Docket Number: 160578/2017

Judge: Kathryn E. Freed

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT:	<u>HON. KATHRYN E. FREED</u>	PART	IAS MOTION 2
	<i>Justice</i>		
-----X		INDEX NO.	<u>160578/2017</u>
LENORE WACHTEL,		MOTION DATE	<u>11/20/2018</u>
Plaintiff,		MOTION SEQ. NO.	<u>002</u>
- V -			
KIDS U PLEASANTVILLE LLC, DS U PC LLC,			
Defendants.			

DECISION AND ORDER

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 7, 8, 9, 10, 11, 12, 13
 were read on this motion to/for JUDGMENT - DEFAULT.

In this personal injury action commenced by plaintiff Lenore Wachtel against defendants Kids U Pleasantville LLC and Kids U PC LLC (hereinafter "Kids U"), plaintiff moves for a default judgment against the defendants. After a review of the motion papers, as well as the relevant statutes and case law, the motion, which is unopposed, is granted.

Plaintiff commenced the captioned action on November 27, 2017 by filing a summons and complaint, verified by her attorney, in which she alleged that she was injured on May 22, 2016 at the premises located at 175 Tompkins Avenue, Pleasantville, in the County of Westchester, State of New York. Plaintiff alleges that she was injured when she sat on a bench inside the store Kids U at the subject premises when the bench fell over and broke, causing her to sustain severe injuries. Plaintiff further alleges that the bench was negligently installed or maintained by defendants and that she was injured by their negligence. Doc. 1.

Service was made upon both named defendants via the Secretary of State on December 4, 2017 (Doc. 3). In his affirmation in support, plaintiff's attorney, Ira Rogowsky, a member of the firm of Harmon, Linder & Rogowsky, avers that defendants have failed to answer the complaint and requests that this Court grant plaintiff a default judgment against defendants. (Doc. 8, para. 7)

Plaintiff brings this motion pursuant to CPLR 3215 (a), which 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).

Plaintiff annexes an affidavit from plaintiff averring to the facts of the incident as sued on in the summons and complaint.

Plaintiff made a previous motion for default which was denied with leave to renew. In its current motion for a default judgment, plaintiff has submitted proof to satisfy this Court that it properly served the defendants with the summons and complaint. Docs. No. 11 and 13. Plaintiff also submits proof of service of a notice of default pursuant to CPLR 3215(g)(3). Doc. No. 13. Thus, plaintiff is entitled to a default judgment pursuant to CPLR 3215.

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

ORDERED that the motion by plaintiff Lenore Wachtel for a default judgment against defendants Kids U Pleasantville LLC and Kids U PC LLC is granted; and it is further

ORDERED that this matter is referred to a Special Referee for the purpose of conducting an inquest as to damages to be awarded to plaintiff; and it is further

ORDERED that within 14 days of the entry of this order on the NYSCEF system, plaintiffs shall file a note of issue, pay the appropriate fees, and serve a copy of this order with notice of entry, as well as a completed information sheet, on the Special Referee Clerk at sprefnyef@nycourts.gov, who is directed to place this matter on the calendar of the Special Referee's part for the earliest convenient date and notify all parties of the hearing date; and it is further

ORDERED that, within twenty days hereof, plaintiffs shall serve a copy of this order on defendant and on the Trial Support Office at 60 Centre Street, Room 158; and it is further

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

11/30/2018

DATE

KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED DENIED

GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE