

Fabian v 1356 St. Nicholas Realty LLC.

2019 NY Slip Op 30281(U)

February 5, 2019

Supreme Court, New York County

Docket Number: 153800/2017

Judge: Kathryn E. Freed

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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. KATHRYN E. FREED **PART** **IAS MOTION 2EFM**

Justice

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MARIA FABIAN,

Plaintiff,

- v -

1356 ST. NICHOLAS REALTY LLC., THE CITY OF NEW YORK,
2009 BAMKP CORP. D/B/A LA ANTILLANA MEAT MARKET, INC.,
and ICELL HOLDINGS INC. D/B/A CRICKET WIRELESS LLC,

Defendants.

-----X

1356 ST. NICHOLAS REALTY LLC.,

Third -Party Plaintiff,

-v-

2009 BAMKP CORP. d/b/a A ANTILLANA
MEAT MARKET, INC., and ICELL HOLDINGS
INC., d/b/a CRICKET WIRELESS, LLC.,

Third-Party Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66

were read on this motion to/for JUDGMENT - DEFAULT

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, Maria Fabian, on or about December 13, 2016 while she was walking on the sidewalk between and adjacent to the premises located at 1356-1358 St. Nicholas Avenue, New York, New York. Plaintiff claims that the accident occurred when plaintiff she fell

due to defective and dangerous conditions negligently permitted to exist by defendants, who allegedly owned, maintained and/or controlled the area in question.

The underlying action was commenced by the filing of a summons and verified complaint as against defendants 1356 ST. NICHOLAS REALTY LLC., THE CITY OF NEW YORK, 2009 BAMKP CORP. D/B/A LA ANTILLANA MEAT MARKET, INC., ICELL HOLDINGS INC. D/B/A CRICKET WIRELESS LLC, on April 25, 2017. Doc. 1.

Defendant/Third Party Plaintiff 1356 ST. NICHOLAS REALTY LLC, (“1356”) appeared in this action by the service of a verified answer with cross-claims dated June 15, 2017. Doc. 4. ST. NICHOLAS also served and filed a Third-Party Complaint against Third-Party Defendants 2009 BAMKP CORP. d/b/a A ANTILLANA MEAT MARKET, INC. and ICELL HOLDINGS INC. d/b/a CRICKET WIRELESS, LLC. on February 15, 2018. Doc. 8.¹ To date, issue has been joined by all remaining parties except 2009 Bamkp Corp. (“Bamkp”). 1356 now moves for a default judgment against Bamkp.

1356, by Sophia M. Candela, an associate of the law firm of Gannon, Goldfarb & Drossman, avers in an affirmation in support of the motion (Doc. 55) that St. Nicholas has a meritorious cause of action against Bamkp in that according to the lease (Doc. 65), Bamkp was responsible for maintaining, repairing and replacing the sidewalk adjacent to 1356 St, Nicholas Avenue. Doc. 65, Art. 13. Additionally, pursuant to the lease, Bamkp was obligated to indemnify and hold harmless 1356 from any and all claims against the landlord arising from any injury

¹ Plaintiff filed a Stipulation of Discontinuance against defendant City of New York on May 18, 2018. Doc. No. 35.

occurring outside of the subject premises resulting from Bamkp's negligence. Doc. 65, Art 11, §11-02. See Affirmation of Candela, ¶¶ 10, 11, and 12.

Candela avers that a good faith letter was sent to Bamkp on April 25, 2018, with an additional copy of the Third-Party Summons and Complaint and informing Bamkp of its imminent default. Doc. 63. Also annexed to the motion is an Affidavit of Merit from Mark Meiman, the property manager of 1356 St. Nicholas Avenue and a representative of 1356. Doc. 64.

Meiman avers that he has personal knowledge of the facts in this matter and has reviewed his files and read the papers herein and attests to the veracity of the facts as set forth herein.

Counsel for 1356 states that Bamkp has failed to appear in the captioned action and that its time to plead has not been extended. Therefore, 1356 requests that this Court grant this motion for default.

1356 moves for a default judgment, in effect, 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). 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).

Since the foregoing facts establish that 1356 satisfied the foregoing elements, it is entitled to a default judgment against Third Party-Defendant Bamkp.

In light of the foregoing, it is hereby:

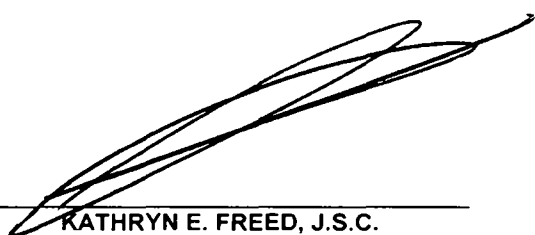
ORDERED that the motion by Defendant/Third-Party Plaintiff 1356 St. Nicholas Realty LLC seeking a default judgment against Third-Party Defendant 2009 Bamkp Corp. d/b/a A Antilla Meat Market, Inc. is granted; and it is further,

ORDERED that, following the filing of the note of issue, this matter is to be set down for an inquest in favor of Defendant/Third-Party Plaintiff, 1356 St. Nicholas Realty LLC, assessing damages against Third-Party Defendant 2009 Bamkp Corp. d/b/a A Antilla Meat Market, 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 Defendant/Third-Party Plaintiff 1356 St. Nicholas Realty LLC, 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.

2/5/2019
DATE


KATHRYN E. FREED, J.S.C.

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