

Grytsanenko v SPA Castle Premier 57, Inc.

2020 NY Slip Op 31815(U)

June 12, 2020

Supreme Court, New York County

Docket Number: 150721/2017

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

-----X

DARIA GRYTSANENKO,

Plaintiff,

- v -

SPA CASTLE PREMIER 57, INC. and C CASTLE GROUP,
CORP.,

Defendants.

-----X

SPA CASTLE PREMIER 57, INC. and C CASTLE GROUP,
CORP.,

Third-Party Plaintiffs,

-against-

UBM CLEANING SOLUTIONS, INC.

Third-Party Defendant.

-----X

INDEX NO. 150721/2017

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595488/2019

The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 25, 26, 27, 28, 29

were read on this motion to/for JUDGMENT - DEFAULT.

In this personal injury action commenced by plaintiff Daria Grytsanenko, defendants/third-party plaintiffs Spa Castle Premier 57, Inc. (“Spa Castle”) and C Castle Group Corp. (“CCG”) move, pursuant to CPLR 3215, for a default judgment against third-party defendant UBM Cleaning Solutions, Inc. (“UBM”). After a review of the motion papers and the relevant statutes and case law the motion, which is unopposed, is decided as follows.

Plaintiff was allegedly injured on March 8, 2016 when she slipped and fell on a slippery floor near the pool area of a building owned, operated, and/or managed by Spa Castle and CCG. Doc. 1. Plaintiff commenced the captioned action by filing a summons and complaint on January 23, 2017, alleging that she was injured due to the negligence of Spa Castle and CCG. Doc. 1. Spa Castle and CCG thereafter joined issue by service of their answer filed October 16, 2017. Doc. 2.

On June 10, 2019, Spa Castle and CCG impleaded UBM, a cleaning contractor, alleging claims for contribution, common-law and contractual indemnification, and breach of contract for failure to procure insurance. Doc. 26. The third-party complaint was verified by counsel for Spa Castle and CCG. Doc. 26. Although UBM was served with the third-party summons and complaint, it has failed to answer or otherwise appear in this action. Docs. 23, 27. Spa Castle and CCG served UBM with an additional copy of the third-party complaint pursuant to CPLR 3215(g) on November 26, 2016. Doc. 28.

Spa Castle and CCG now move, pursuant to CPLR 3215(a), for a default judgment against UBM.

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 a party moving for a default judgment

pursuant to CPLR 3215 must establish proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the default in answering or appearing. *See Gantt v North Shore-LIJ Health Sys.*, 140 AD3d 418 (1st Dept 2016).

Although Spa Castle and CCG have established service of process, compliance with the additional service requirement set forth in CPLR 3215(g), and UBM's failure to answer, they have failed to submit sufficient "proof of the facts constituting the claim." CPLR 3215 (f); *see Manhattan Telecom. Corp. v H & A Locksmith, Inc.*, 21 NY3d 200, 202 (2013). The third-party complaint, verified by counsel, is "purely hearsay, devoid of evidentiary value, and thus insufficient to support entry of a judgment pursuant to CPLR 3215." *Martinez v Reiner*, 103 AD3d 477, 478 (1st Dept 2013) (internal quotation marks and citation omitted). Furthermore, it is error to issue a default judgment "without a complaint verified by someone or an affidavit executed by a party with personal knowledge of the merits of the claim." *Beltre v Babu*, 32 AD3d 722, 723 (1st Dept 2006); *see Manhattan Telecom. Corp. v H & A Locksmith, Inc.*, 21 NY3d at 202; *Mejia-Ortiz v Inoa*, 71 AD3d 517 (1st Dept 2010).

Where, as here, the complaint is verified only by counsel, this Court may not rely on it as proof of any of the facts alleged. *See Martinez v Reiner*, 103 AD3d at 478. Since plaintiffs fail to submit an affidavit by plaintiff setting forth the facts

constituting the claim, this Court cannot issue a default judgment. *See Mejia-Ortiz v Inoa*, 71AD3d at 517; *Beltre v Babu*, 32 AD3d at 723. Although counsel for Spa Castle and CCG represents that an affidavit of a witness with knowledge was annexed to the motion as Exhibit F, no such exhibit was filed with NYSCEF.

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

ORDERED that the motion by plaintiff is denied with leave to renew upon the submission of proper papers within thirty days after entry of this order, upon penalty of dismissal of the third-party complaint; and it is further,

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

6/12/2020

DATE



KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: