

Taft v Mehanata NYC, Inc.
2020 NY Slip Op 32383(U)
July 21, 2020
Supreme Court, New York County
Docket Number: 160604/2019
Judge: John J. Kelley
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOHN J. KELLEY PART IAS MOTION 56EFM

Justice

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DAVID TAFT,

Plaintiff,

- v -

MEHANATA NYC, INC., C.A.J. REALTY CORP., and C.A.J.
113 LUDLOW CORP., BG BAR, INC.

Defendant.

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INDEX NO. 160604/2019

MOTION DATE 07/20/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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

were read on this motion to/for JUDGMENT - DEFAULT

In this personal injury action arising from a slip- or trip-and-fall accident on or near a staircase in a building in which the defendant Mehanata NYC, Inc., operated the Mehanata Bulgarian Bar, the plaintiff moves pursuant to CPLR 3215 for leave to enter a default judgment against the defendants C.A.J. Realty Corp. and C.A.J. Ludlow Corp. (together the CAJ defendants). Although neither of those two defendants opposes the motion, the plaintiff's motion is denied, albeit without prejudice to renewal upon proper papers.

The plaintiff allegedly slipped or tripped and fell and was injured while walking in or near a staircase in a building located at 113 Ludlow Street in Manhattan. The plaintiff commenced this action to recover damages against the alleged owners of the building and the proprietor or proprietors of the bar that leased the ground floor of the building from the owner.

Specifically, the complaint, which was verified only by an attorney, asserts that, on July 2, 2019,

"the plaintiff, DAVID TAFT, was lawfully and legally traversing the land and/or Premises and/or bar and/or stairs erected thereon at or near the property

commonly known as 113 Ludlow Street, in the County of New York, City and State of New York.

“That on July 2, 2019, the plaintiff, DAVID TAFT, was a lawful invitee at the land and/or Premises and/or bar erected thereon at or near the property commonly known as 113 Ludlow Street, in the County of New York, City and State of New York.

“That on July 2, 2019, the plaintiff, DAVID TAFT, was caused to slip and fall while lawfully traversing the land and/or Premises and/or bar erected thereon at or near the property commonly known as 113 Ludlow Street, in the County of New York, City and State of New York [and]

“That on July 2, 2019, the plaintiff, DAVID TAFT, was caused to slip and fall on a dangerous, hazardous and/or slippery condition while lawfully traversing the land and/or Premises and/or bar erected thereon at or near the property commonly known as 113 Ludlow Street, in the County of New York, City and State of New York.”

The complaint further alleges that all of the named defendants “had actual notice of the aforesaid dangerous, defective and hazardous conditions,” “created the aforesaid dangerous, defective and hazardous conditions,” and “created and had actual and constructive knowledge of the aforesaid dangerous, defective and hazardous conditions.” In addition, the complaint also asserted that the CAJ defendants, as well as the other named defendants, each owned, operated, managed, maintained, and controlled the accident location.

In his own affidavit, the plaintiff asserted, in relevant part, that he

“was involved in an incident on June 29, 2019. The incident occurred at 113 Ludlow Street, in the County, City and State of New York. As a result of this incident, [the plaintiff] sustained serious bodily injuries. This incident occurred as a result of the negligence of the Defendant and [the plaintiff] in no way contributed thereto.”

In his affidavit, the plaintiff further averred that, “[f]ollowing this accident, [he] retained the services of the SHULMAN & HILL, PLLC. Since such time they have instituted a lawsuit on [the plaintiff’s] behalf by filing a Summons and Verified Complaint, which [he has] read and agree[s] with all the allegations within.”

Pursuant to CPLR 3215(f), a plaintiff seeking leave to enter a default judgment must 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 (see CPLR 3215[f]; *Allstate Ins. Co. v Austin*, 48 AD3d 720, 720)" (*Atlantic Cas. Ins. Co. v RJNJ Services, Inc.* 89 AD3d 649 [2d Dept. 2011]; see *Rivera v Correction Officer L. Banks*, 135 AD3d 621 [1st Dept 2016]).

The plaintiff established, through the affidavits of service from his process server, and his attorney's affirmation attesting that the CAJ defendants neither answered the complaint nor otherwise appeared in the action, that those defendants were served with the summons and complaint and defaulted in answering the complaint. He has nonetheless failed to set forth proof of facts constituting the claim.

"CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action (see, 4 Weinstein-Korn-Miller, NY Civ Prac paras. 3215.22-3215.27). The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts"

Joosten v Gale, 129 AD2d 531, 535 [1st Dept 1987]; see *Martinez v Reiner*, 104 AD3d 477, 478 [1st Dept 2013]; *Beltre v Babu*, 32 AD3d 722, 723 [1st Dept 2006]). Stated another way, while the "quantum of proof necessary to support an application for a default judgment is not exacting . . . some firsthand confirmation of the facts forming the basis of the claim must be proffered" (*Guzetti v City of New York*, 32 AD3d 234, 236 [1st Dept 2006]). In other words, the proof submitted must establish a prima facie case (see *id.*; *Silberstein v Presbyterian Hosp.*, 95 AD2d 773 [2d Dept 1983]).

Here, the plaintiff failed to meet even that minimal standard. In the first instance, "[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" (*Feefer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]; see *Martinez v Reiner*, 104 AD3d 477 [1st Dept 2013]; see generally *Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Trawally v East Clarke Realty Corp.*, 92 AD3d 471 [1st Dept 2012]; *Thelen LLP v Omni Contracting Co. Inc.*, 79 AD3d 605 [1st Dept 2010]). Moreover, while an attorney's affirmation may serve as a vehicle to introduce documentary evidence in

support of the motion (see *Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]; *Olan v Farrell Lines, Inc.*, 64 NY2d 1092 [1985]; *Lewis v Safety Disposal Sys. of Pa., Inc.*, 12 AD3d 324 [1st Dept 2004]), no such relevant documentation is appended, such as a copy of a deed or a printout from the New York City Register's ACRIS (Automated City Register Information System) database demonstrating that the CAJ defendants in fact owned the subject premises.

Moreover, in premises liability actions, a plaintiff has the burden of making a prima facie showing that the defendants had a duty to keep the premises in a reasonably safe condition, but nonetheless created a hazardous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it (see *Amendola v City of New York*, 89 AD3d 775, 775 [2d Dept 2011]; see also *Pintor v 122 Water Realty, LLC*, 90 AD3d 449 [1st Dept 2011]). "To constitute constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit defendant's employees to discover and remedy it" (*Gordon v American Museum of Natural History*, 67 NY2d 836, 838 [1986] [citations omitted]).

The plaintiff's affidavit of merit and the papers submitted in support of his motion contain no testimonial or documentary evidence supporting the allegations in the complaint as to the CAJ defendants' duty to maintain the subject premises, or their acts of commission or omission that breached the duty. There is no allegation of fact from a person with firsthand knowledge or documentary evidence showing that the CAJ defendants owned the premises at 113 Ludlow Street. Nor is there any allegation of fact from a person with firsthand knowledge that the CAJ defendants created a dangerous condition, that they had actual notice thereof, or that the condition was visible and apparent for a sufficient length of time prior to the accident to permit them to discover and remedy it, let alone the nature of the dangerous condition. Rather, the plaintiff's affidavit constitutes only an allegation that he was involved in an incident at 113 Ludlow Street and was injured due to the CAJ defendant's negligence, but omits how those defendants either created the condition or had actual or constructive notice thereof; even if the

plaintiff adopted the allegations set forth in the complaint in affidavit form, those allegations simply constitute boilerplate recitations that the CAJ defendants had actual or constructive notice of some type of dangerous condition, and that the plaintiff slipped or tripped on it, but articulate no facts that support those allegations. Hence, "[n]either the conclusory allegations of the complaint nor the affidavit of merit set forth the facts constituting the alleged negligence sufficiently to support a default judgment" (*Cohen v Schupler*, 51 AD3d 706, 707 [2d Dept 2008]; see *Beaton v Transit Facility Corp.*, 14 AD3d 637, 637 [2d Dept 2005]).

Accordingly, it is

ORDERED that the plaintiff's motion for leave to enter a default judgment against the defendants C.A.J. Realty Corp. and C.A.J. Ludlow Corp. is denied, without prejudice to renewal upon proper papers; and it is further,

ORDERED that the plaintiff shall serve a copy of this order with notice of entry upon the defendants C.A.J. Realty Corp. and C.A.J. Ludlow Corp. by regular mail at their last known addresses within 30 days of the entry of this order.

This constitutes the Decision and Order of the court.

7/21/2020
DATE


JOHN J. KELLEY, J.S.C.

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