

Alston v 1466 Broadway, LP

2020 NY Slip Op 32427(U)

July 24, 2020

Supreme Court, New York County

Docket Number: 161748/2019

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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INDEX NO. 161748/2019

OMAR ALSTON,

MOTION SEQ. NO. 001

Plaintiff,

- v -

DECISION AND ORDER

1466 BROADWAY, LP and KNICKERBOCKER HOTEL,

Defendants.

-----X

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

were read on this motion to/for JUDGMENT - DEFAULT

In this personal injury action, plaintiff Omar Alston ("Alston") moves, pursuant to CPLR 3215, for a default judgment as against defendant 1466 Broadway, LP ("144 Broadway"), and setting this matter down for an inquest and assessment of damages (Doc. 13). After a review of the motion papers, as well as the relevant statutes and case law, the motion, which is unopposed, is denied with leave to renew upon proper papers.

FACTUAL AND PROCEDURAL BACKGROUND:

On July 1, 2019, Alston allegedly fell on the sidewalk located at 6 Times Square in Manhattan ("the premises") (Doc. 15). In December 2019, Alston commenced this action against defendants Knickerbocker Hotel ("the Hotel") and 1466 Broadway, the alleged owners of the premises and sidewalk, by filing a summons and verified complaint (Doc. 1). The Hotel interposed

an answer on January 1, 2020, denying Alston's allegations of negligence and raising several affirmative defenses and cross claims (Doc. 7). 1466 Broadway has failed to interpose an answer or otherwise appear in this action (14 ¶ 7).

In June 2020, Alston filed the instant motion seeking a default judgment against 1466 Broadway, which is not opposed (Doc. 13).

LEGAL CONCLUSIONS:

"CPLR 3215 (a) provides, in pertinent part, that when a defendant has failed to appear, plead or proceed to trial . . . , the plaintiff may seek a default judgment against him [or her]. 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" (*DNT Enters. Inc. v Chatsworth Realty Corp.*, 2020 NY Slip Op 32289[U], 2020 NY Misc LEXIS 3294, *5 [Sup Ct, NY County 2020] [internal quotation marks, brackets and citation omitted]; see *Gantt v North Shore-LIJ Health Sys.*, 140 AD3d 418, 418 [1st Dept 2016]).

Although 1466 Broadway was properly served with the summons and complaint and has failed to interpose an answer or appear in this action (Doc. 16, 14 ¶ 7), the motion is denied because Alston has failed to submit sufficient proof of the facts constituting the claim. In his affidavit of merit, Alston affirms, in relevant part, "[t]hat on or about July 1, 2019, while . . . on the sidewalk in front of the premises known as 6 Times Square . . . , [he] was caused to be injured as a result of the [d]efendant's negligence" (Doc. 17). Since the affidavit is devoid of any details as to how Alston was injured, this Court cannot grant the motion seeking a default judgment against 1466 Broadway (see *Cohen v Schupler*, 51 AD3d 706, 707 [2d Dept 2008]; *Smart v 3rd St. Mini. Mkt.*,

Corp., 2020 NY Slip Op 30114[U], 2020 NY Misc LEXIS 173, *4-5 [Sup Ct, NY County 2020];
Razreshenco v City of NY, 2016 NY Slip Op 30338[U], 2016 NY Misc LEXIS 642, *12 [Sup Ct,
NY County 2016]).¹

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

ORDERED that plaintiff Omar Alston 's motion for a default judgment against defendant 1466 Broadway, LP is denied, with leave to renew upon proper papers within 30 days after entry of this order, upon penalty of dismissal; and it is further

ORDERED that plaintiff Omar Alston shall serve a copy of this order, with notice of entry, on defendants within 20 days after this order is uploaded to the New York State Courts E-filing System (NYSCEF); and it is further

¹ The complaint, which was verified by Alston's attorney, is insufficient to support entry of judgment pursuant to CPLR 3215 (*see Hazim v Winter*, 234 AD2d 422, 422 [2d Dept 1996]; *Great Am. Ins. Co. of NY v Gold Duct New Begin, LLC*, 2020 NY Slip Op 30138[U], 2020 NY Misc LEXIS 219, *3 [Sup Ct, NY County 2020]).

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

7/24/2020

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