

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. O. PETER SHERWOOD PART IAS MOTION 49EFM

Justice

PEOPLE OF THE STATE OF Plaintiff, - v - FISCHMAN, AARON D Defendant. INDEX NO. 452353/2018 MOTION DATE 05/01/2019 MOTION SEQ. NO. 002

DECISION + ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 31, 32, 35, 36, 38, 39, 40, 41, 42, 43, 44, 47, 48, 51, 52, 53, 54, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 77, 78, 79, 80

were read on this motion to/for JUDGMENT - DEFAULT

Under motion sequence 002, plaintiff People of the State of New York ("plaintiff") seeks a default judgment against defendants Aaron D. Fischman, Lawrence Katz, Seth Rosenblatt, Cardis Enterprises International N.V., Cardis Enterprises International (U.S.A.) Inc., Cardis Enterprises International B.V., Choshen Israel LLC, Law Offices of Lawrence Katz, Esq. PLLC, and Law Offices of Lawrence Katz P.C. and relief defendants Nina Fischman, Rafaela Fischman, Alexander Fischman, Anne Shimanovich, and Ethel Weissman. On May 13, 2019, a hearing was held wherein the motion for default judgment was denied on the condition that the defendants accept service. Since this hearing, four defendants have accepted service and have submitted either an answer or a motion to dismiss: Aaron Fischman, Lawrence Katz, Seth Rosenblatt, the Law Offices of Lawrence Katz, Esq. PLLC, and the Law Offices of Lawrence Katz, Esq. PC. Consequently, this motion proceeds with the remaining non-responsive defendants: Cardis Enterprises International N.V., Cardis Enterprises International (U.S.A.) Inc., Cardis Enterprises International B.V., and Choshen Israel LLC, and relief defendants Nina Fischman, Rafaela Fischman, Alexander Fischman, Anne Shimanovich, and Ethel Weissman (collectively, the "non-responsive defendants").

CPLR 3215 (a) provides that "[w]hen a defendant has failed to appear, plead or proceed to trial of an action reached and called for trial, . . . the plaintiff may seek a default judgment against him" (CPLR 3215 [a]). A judgment by default requires "proof of service of the summons and the complaint . . . and proof of the facts constituting the claim, the default and the amount due by affidavit made by the party," or a verified complaint (CPLR 3215 [f]; Zelnik v. Bidermann Indus. U.S.A., Inc., 242 AD2d 227, 228 [1st Dept 1997]). "The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts" (Feffer v Malpeso, 210 AD2d 60, 61 [1st Dept 1994]). An application for default judgment must be denied when supported only by a complaint verified by an attorney, rather than by someone with personal knowledge of the facts (see Drake v Drake, 296 AD2d 566, 566 [2d Dept 2002]). "[A] complaint verified by counsel amounts to no more than an attorney's affidavit and is therefore insufficient to support entry of judgment pursuant to CPLR 3215" (Mullins v DiLorenzo, 199 AD2d 218, 219 [1st Dept 1993]).

Plaintiff has provided proof of service on each defaulting defendant (Plaintiff's Affidavit of Service by Certified Mail and Via Email [NYSCEF Doc No. 82]). Plaintiff has further provided proof of the facts constituting the claims and proof of the non-responsive defendants' default via an Affirmation in Support of Motion for Default Judgment and an Affirmation of Facts attached as Exhibit A (Affirmation in Support of Motion for Default Judgment [NYSCEF Doc. No. 26]; Affidavit of Facts Upon Motion for Default Judgment [NYSCEF Doc. No. 27]). Plaintiff has therefore made a prima facie case for default judgment against the non-responsive defendants.

In accordance with the forgoing, it is hereby

ORDERED that the motion for a default judgment is **GRANTED** with respect to defendants Cardis Enterprises International N.V., Cardis Enterprises International (U.S.A.) Inc., Cardis Enterprises International B.V., and Choshen Israel LLC, and relief defendants Nina Fischman, Rafaela Fischman, Alexander Fischman, Anne Shimanovich, and Ethel Weissman; and it is further

ORDERED that the action is severed as to defendants Cardis Enterprises International N.V., Cardis Enterprises International (U.S.A.) Inc., Cardis Enterprises International B.V., and Choshen Israel LLC, and relief defendants Nina Fischman, Rafaela Fischman, Alexander Fischman, Anne Shimanovich, and Ethel Weissman, and is continued as to defendants Aaron Fischman, Seth Rosenblatt, Lawrence Katz, the Law Offices of Lawrence Katz, Esq. PLLC, and the Law Offices of Lawrence Katz, Esq. PC; and it is further

ORDERED that plaintiff's motion for a default judgment with regards to the defaulting defendants is referred to a Special Referee to hear and report regarding the amount of damages, including principal, interest, and reasonable attorneys' fees and disbursements; and it is further

10/1/2019

DATE

O. P. Sherwood

O. PETER SHERWOOD, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE