

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)
)
RONIS ACOSTA)
)
)
Plaintiff,)
)
vs.)
)
PURA LIFE FIESTA CENTER; ZAIDA)
ALTAMIRANO; DANIEL'S)
ESPRESSO, INC.; DANIEL'S)
RESTAURANT AND LOUNGE; GALI)
MILSTAIN; AVIV BEN YAIR; KFIR)
GISPAN; NICOLE NAGLIERI; BEACH)
MARKET, LLC; and MICHAEL)
LARROW,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-27-358

ORDER OF DEFAULT
AND
ORDER OF REFERENCE

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SEP 19 2016
SC Court of Appeals

IT APPEARS from the attached Affidavit of Default that more than thirty (30) days have elapsed since service of process was accomplished on the following Defendants:

Aviv Ben Yair was personally served on September 2, 2015, as is shown on the filed Affidavit of Service;

Zaida Altamirano, individually and in her representative capacity as owner, manager or general agent of Defendant Pura Life Fiestas Center, was served on August 25, 2015 which was acknowledged in writing by counsel for these defendants. Counsel for the Defendants Zaida Altamirano and Pura Life Fiestas Center requested and was granted a thirty (30) day extension in which to file responsive pleadings, making same due on October 25, 2015. The Defendants, Zaida Altamirano and Pura Life Fiestas Center, did not serve upon counsel for the plaintiff an answer or any other pleading or motion until November 5, 2015;

Daniel's Espresso, Inc. was served through the Secretary of State on September 21, 2015 as shown on the filed Acceptance of Service; and

Beach Market, LLC, was served through the Secretary of State on September 14, 2015 as shown on the filed Acceptance of Service.

IT FURTHER APPEARS that Defendants, Aviv Ben Yair, Zaida Altamirano, individually and in her representative capacity as owner, manager or general agent of Defendant Pura Life Fiestas Center, Beach Market, LLC, and Daniel's Espresso, Inc., have failed to file or timely file an Answer or any other pleading or motion upon counsel for Plaintiff in response to the Complaint.

IT IS ORDERED ADJUDGED AND DECREED that the Defendants, Aviv Ben Yair, Zaida Altamirano, individually and in her representative capacity as owner, manager or general agent of Defendant Pura Life Fiestas Center, Beach Market, LLC, and Daniel's Espresso, Inc., be and are hereby adjudged to be in default, and the Plaintiff, Ronis Acosta, shall be entitled to a hearing on damages in connection with this Order of Default.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this action be and hereby is referred to Stephen Bennett, Esquire, as Special Referee to preside over a hearing on the Plaintiff's damages to take testimony, make findings of fact and conclusions of law, and to enter a final judgment herein.

AND IT IS SO ORDERED.



Beaufort, South Carolina

November 2, 2015

Dec

Honorable Carmen T. Mullen
Chief Administrative Judge

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)
)
RONIS ACOSTA,)
)
Plaintiff,)
)
v.)
)
PURA LIFE FIESTAS CENTER; ZAIDA)
ALTAMIRANO; DANIEL'S ESPRESSO,)
INC.; DANIEL'S RESTAURANT AND)
LOUNGE; GALI MILSTAIN; AVIV BEN)
YAIR; KFIR GISPAN; NICOLE)
NAGLIERI; BEACH MARKET, LLC;)
and MICHAEL LARROW,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-27-358

ORDER DENYING MOTION TO OPEN
DEFAULT AS TO DEFENDANTS
ZAIDA ALTAMIRANO AND PURA LIFE
FIESTAS CENTER

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SEP 19 2016

SC Court of Appeals

2016 APR 19 AM 10:16

This matter comes before the Court upon a Motion to Open Default and/or Stay Damages Hearing filed by Defendants Zaida Altamirano ("Altamirano") and Pura Life Fiestas Center ("Pura Life"), dated January 21, 2016. The damages hearing in this matter having already been postponed due to Plaintiff's counsel's trial schedule, the portion of Defendants' motion seeking to stay the damages hearing is declared moot. A hearing was held on March 17, 2016, with Jose Fuentes appearing on behalf of Defendants Altamirano and Pura Life, and Allison Diercks appearing on behalf of Plaintiff. No other parties or counsel were in attendance. Based on the Findings of Fact and Conclusions of law as set forth below and as recited on the record at the hearing, Defendants' Motion to Open Default is denied.

FINDINGS OF FACT

1. The Summons and Complaint in this matter, filed August 18, 2015, were properly served on Defendants Altamirano and Pura Life on August 25, 2015.

POSTED
BY DATE APR 19 2016

2. In an email to Plaintiff's counsel on September 23, 2015, counsel for Altamirano and Pura Life acknowledged proper service and confirmed an agreed-upon a 30-day extension in which to answer the Complaint. Altamirano's and Pura Life's deadline to file responsive pleadings was extended to October 25, 2015.

3. No answer or other responsive pleading was served by Defendants Altamirano and Pura Life by the October 25, 2015 deadline.

4. On November 4, 2015, Plaintiff's counsel contacted counsel for Defendants Altamirano and Pura Life advising the extension deadline had passed. Defendants' counsel stated an Answer had been sent out that same day.

5. Defendants Altamirano and Pura Life's Answer was served on November 4, 2015 and filed with the Court on November 9, 2015.

6. Having filed an untimely Answer, Defendants Altamirano and Pura Life were properly in default. An Affidavit of Default was served on November 9, 2015 and filed with the Court on November 16, 2015.

7. An Order of Default was signed by the Honorable Carmen Mullen on December 2, 2015 and the matter was referred to Stephen Bennett, Esquire, as Special Referee for the purposes of conducting a damages hearing.

CONCLUSIONS OF LAW

Rule 55(c), SCRCP, allows the court to set aside an entry of default "for good cause shown." Rule 55(c), SCRCP. Once a default judgment has been entered, Rule 60(b), SCRCP, requires a showing of "mistake, inadvertence, surprise, or excusable neglect" to set aside the default judgment. Rule 60(b), SCRCP.

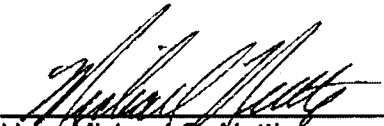
Despite being served with the Affidavit of Default on November 10, 2016,

Defendants Altamirano and Pura Life did not move for relief until January 21, 2016, well over a month after the default judgment had been entered. Defendants were not required to wait until the order of default was entered before they could seek relief from default. Once a default judgment is entered, the higher standard of Rule 60(b), SRCP, must be applied. Defendants presented no evidence or testimony that would justify their failure to timely seek relief after they received notice of default. Accordingly, I find that Defendants Altamirano and Pura Life failed to present proof of "mistake, inadvertence, surprise, or excusable neglect" under Rule 60(b), SCRPC, sufficient to vacate the Order of Default.

Wherefore, Defendants Zaida Altamirano and Pura Life Fiestas Center's Motion to Open Default is hereby DENIED.

AND IT IS SO ORDERED.

4-4, 2016
Ridgeland, South Carolina


Hon. Michael G. Nettles
Presiding Judge

FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF JASPER

2016 AUG -

PH 1: FOURTEENTH JUDICIAL CIRCUIT

RONIS ACOSTA,

CLERK OF COURT
JASPER COUNTY

C/A NO.: 2015-CP-27-358

Plaintiff,

ORDER OF JUDGMENT

v.

PURA LIFE FIESTA CENTER; ZAIDA
ALTAMIRANO; DANIEL'S ESPRESSO,
INC.; DANIEL'S RESTAURANT AND
LOUNGE; GALI MILSTAIN; AVIV BEN
YAIR; KFIR GISPAN; NICOLE
NAGLIERI; BEACH MARKET, LLC;
and MICHAEL LARROW,

Defendants.

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SEP 19 2016
SC Court of Appeals

A damages hearing in this action was conducted before the undersigned as Special Referee following an Order of Default and Order of Reference signed by the Honorable Carmen T. Mullen on December 2, 2015. The hearing commenced May 25, 2016 at 9:30 a.m. at Peters Murdaugh Eitzroth Detrick Law Firm located at 690 North Green Street, Ridgeland, South Carolina. Present at the hearing were the Plaintiff, Ronis Acosta, and his spouse, and Patrick W. Carr as counsel for Plaintiff, and Glen W. LaForce, Sr. as counsel for Plaintiff, and Kelly Dean as counsel for Defendant Michael Larrow, and Cynthia Smith Hernandez as certified translator and interpreter, and a court reporter. No other parties or attorneys were present. An email addressed to Plaintiff's counsel was provided to the Special Referee from Jose Fuentes, counsel for Defendants Pura Life Fiesta Center and Zaida Altamirano, indicating he and his clients had notice of the damages hearing and were voluntarily declining to attend or participate.

At the hearing, Plaintiff introduced and submitted Exhibits marked #1 through

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#35, and all of those Exhibits were entered into the record without objection. All Exhibits entered into evidence at the time of hearing are specifically incorporated into and made a part of this Order.

From the record before me, including specifically Exhibits #1 through #31, it appears that Defendants Pura Life Fiesta Center, Zaida Altamirano, Daniel's Espresso, Inc., Aviv Ben Yair, and Beach Market, LLC are properly in default, and this Order shall be effective as to each and all of them jointly and severally. It further appears that service was previously made by publication on Defendants Gali Milstain and Kfir Gispan; however, those Defendants were not included as defaulted parties in the Order of Default and Order of Reference, and therefore, this Order is made without prejudice to Defendants Milstain and Gispan. It further appears that Defendant Nicole Naglieri was previously dismissed as a party to this action, and therefore, this Order is of no effect as to Naglieri.

It further appears from the record, and all counsel present at the default damages hearing have stipulated, that Defendant Michael Larrow is the only party to this action who has timely answered Plaintiff's Complaint. Defendant Larrow is entitled to a defense on the merits of Plaintiff's claims, including specifically any issues relating to liability, damages, contribution, setoff, apportionment, or other issues raised in the pleadings by these parties. Therefore, this Order and the default damages proceeding shall be without prejudice to Defendant Larrow, and all issues of fact and conclusions of law with respect to Defendant Larrow will be held in abeyance to be later addressed by the circuit court.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Summons and Complaint in this matter, filed August 18,

2015, were properly served on the Defendants, Pura Life Fiesta Center, Zalda Altamirano, Daniel's Espresso, Inc., Beach Market, LLC, and Aviv Ben Yair, and each and all of these Defendants are properly in default having failed to timely respond to Plaintiff's Complaint.

2. All Defendants in default were provided proper notice of the default damages hearing pursuant to the South Carolina Rules of Civil Procedure.

3. All allegations contained within Plaintiff's Complaint in this action are deemed admitted and conclusively established against the Defendants who are in default and subject to this Order, including the facts giving rise to Plaintiff's injuries and Plaintiff's entitlement to relief from the defaulting Defendants.

4. I have received and reviewed testimony and Exhibits from Plaintiff Ronis Acosta and his spouse.

5. This hearing was conducted without prejudice as to Defendant Michael Larrow and his ability to defend the case on the merits, including all issues relating to liability, damages, contribution, setoff, apportionment, and such shall be held in abeyance for later determination by the circuit court.

6. Plaintiff Ronis Acosta has a date of birth of August 6, 1986, and at the time of this hearing he was a 29 year old male with a statutory life expectancy in South Carolina of no less than 48.74 years pursuant to S.C. Code Section 19-1-150.

7. Plaintiff Ronis Acosta is a resident of Beaufort County, South

Carolina who resides with his spouse and their three young children.

8. Plaintiff Ronis Acosta has a less than high school education, and he has only worked as a manual laborer and painter much of his adult life, and he is now severely limited in his ability to perform work given the amputation of his dominant right arm, caused by the automobile wreck in which he was a passenger on January 18, 2015, which is the subject of this lawsuit.

9. Based upon the pleadings, evidence, and testimony presented to me, I find and conclude that Plaintiff Ronis Acosta is entitled to judgment in his favor against the defaulting Defendants Pura Life Fiesta Center, Zaida Altamirano, Daniel's Espresso, Inc., Aviv Ben Yair, and Beach Market, LLC, jointly and severally, for his cause of action for negligence and dram shop liability as raised in his Complaint.

10. The Defendants Pura Life Fiesta Center, Zaida Altamirano, Daniel's Espresso, Inc., Aviv Ben Yair, and Beach Market, LLC did knowingly serve alcoholic beverages to someone who was already intoxicated, in violation of the common law of South Carolina, and in violation of safety statutes governing alcohol sales and service found under S.C. Code Section 61-4-580, and then permitted this intoxicated person to leave their premises and operate a motor vehicle upon the public roadways in South Carolina.

11. This conduct by these Defendants created an unreasonable risk of harm to Plaintiff Ronis Acosta, and directly and proximately resulted

in severe injuries to him.

12. The conduct of these Defendants was reckless and wanton, by their service of alcohol to someone who they knew or should have known was already intoxicated, by permitting an impaired and intoxicated customer to leave their premises and attempt to drive, by failing to adopt and enforce safe alcohol sales and service policies and procedures, by selling and serving alcoholic beverages in violation of the laws of South Carolina governing alcohol sales, and in all other particulars alleged in Plaintiff's Complaint.

13. Based upon the evidence and testimony presented to me, I find and conclude that Plaintiff suffered severe physical injuries due to the events described in his Complaint, including amputation of his right arm, fractured ribs, a collapsed lung, and lacerations resulting in scarring about his head and facial areas.

14. Based upon the evidence and testimony presented to me, I find and conclude that Plaintiff Ronis Acosta has incurred reasonable and necessary medical expenses to date totaling Ninety-Seven Thousand Six Hundred Ninety-Three Dollars and Sixty-Three Cents (\$97,693.63).

15. Based upon the evidence and testimony presented to me, I find and conclude that Plaintiff Ronis Acosta is reasonably expected to incur and require future medical expenses related to acquiring and maintaining a prosthetic arm over his lifetime in the amount of Eight Hundred Twenty-Three Thousand Two Hundred Ninety-Nine Dollars (\$823,299.00).

16. Based upon the evidence and testimony presented to me, I find and conclude that Plaintiff Ronis Acosta has suffered a debilitating injury that had caused him to suffer lost income, and will most probably cause him to suffer lost income or diminished earning capacity for the remainder of his working life. I further find the reasonable estimation of Plaintiff's lost past income and lost future earning capacity to be no less than Nine Hundred Thirty-Five Thousand Dollars (\$935,000.00).

17. Based upon the evidence and testimony presented to me, I find and conclude that the total economic damages suffered by Plaintiff Ronis Acosta, past and future, to be no less than One Million Eight Hundred Fifty-Five Thousand Nine Hundred Ninety-Two Dollars and Sixty-Three Cents (\$1,855,992.63), and Plaintiff is entitled to judgment against the defaulting Defendants for same.

18. Based upon the testimony and evidence presented to me, I further find and conclude that Plaintiff Ronis Acosta has suffered non-economic damages to include pain and suffering, loss of enjoyment of life, scarring and disfigurement, and mental anguish, all as a direct and proximate result of the events described in his Complaint.

19. Based upon the testimony and evidence presented to me, I find and conclude that Plaintiff Ronis Acosta's non-economic damages are fairly and reasonably evaluated at no less than One Million Five Hundred Thousand Dollars (\$1,500,000), all past and future, and Plaintiff is entitled to judgment against the defaulting Defendants for same.

20. I find and conclude that Plaintiff Ronis Acosta is entitled to

judgment against the defaulting Defendants, Pura Life Fiesta Center, Zaida Altamirano, Daniel's Espresso, Inc., Beach Market, LLC, and Aviv Ben Yair, jointly and severally, for total actual damages in the amount of Three Million Three Hundred Fifty-Five Thousand Nine Hundred Ninety-Two Dollars and Sixty-Three Cents (\$3,355,992.63).

21. Plaintiff has also sought punitive damages in this matter based upon the allegations of his Complaint. I find and conclude that the Plaintiff's entitlement to punitive damages in this matter is admitted by the defaulting parties by reason of their failure to timely respond to the Complaint. I further find and conclude that there is clear and convincing evidence of a reckless, willful, and wanton violation of Plaintiff's rights in this matter by these Defendants, and therefore, an appropriate award of punitive damages is necessary in this matter to deter the wrongdoers and others from committing like offenses in the future.

22. With consideration of the judicial precedent in South Carolina and the United States regarding punitive damages, including specifically *BMW v. Gore*, *Gamble v. Stevenson*, and similar guideposts, I find and conclude that an award of punitive damages equal to the actual damages is appropriate in this matter.

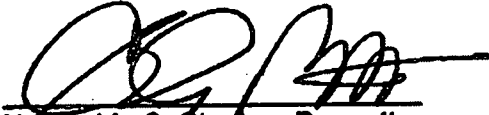
23. Further, I find and conclude that an award of punitive damages equal to the actual damages awarded is consistent with, and indicated by, the legislature of South Carolina according to the prescription on punitive damages adopted under S.C. Code Section 15-32-530(A).

24. I find and conclude that Plaintiff is entitled to an award of punitive damages against the defaulting Defendants in the amount of Three Million Three Hundred Fifty-Five Thousand Nine Hundred Ninety-Two Dollars and Sixty-Three Cents (\$3,355,992.63).

25. Therefore, the total default judgment entered in favor of Plaintiff, Ronis Acosta, against the defaulting Defendants, Pura Life Fiesta Center, Zaida Altamirano, Daniel's Espresso, Inc., Beach Market, LLC, and Aviv Ben Yair, all jointly and severally, shall be Six Million Seven Hundred Eleven Thousand Nine Hundred Eighty-Five Dollars and Twenty-Six Cents (\$6,711,985.26).

Wherefore, Plaintiff Ronis Acosta is hereby granted judgment against the Defendants, Pura Life Fiesta Center, Zaida Altamirano, Daniel's Espresso, Inc., Beach Market, LLC, and Aviv Ben Yair, jointly and severally, in the amount of Six Million Seven Hundred Eleven Thousand Nine Hundred Eighty-Five Dollars and Twenty-Six Cents (\$6,711,985.26). AND IT IS SO ORDERED.

Aug. 1ST, 2016
Ridgeland, South Carolina


Honorable C. Stephen Bennett
Presiding Special Referee

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

RONIS ACOSTA

Plaintiff,

vs.

PURA LIFE FIESTA CENTER; ZAIDA
ALTAMIRANO; DANIEL'S
ESPRESSO, INC.; DANIEL'S
RESTAURANT AND LOUNGE; GALI
MILSTAIN; AVIV BEN YAIR; KFIR
GISPAN; NICOLE NAGLIERI; BEACH
MARKET, LLC; and MICHAEL
LARROW,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-27-358

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SC Court of Appeals

NOTICE OF FILING
EXHIBITS

2015 SEP 22 AM 9:58
CLERK OF COURT
SOUTH CAROLINA

TO: ALL INTERESTED PARTIES AND COUNSEL:

COMES NOW the Plaintiffs, and hereby notify the parties herein that Plaintiffs did this day file with the Clerk of Court for the County of Jasper, State of South Carolina, the following exhibits:

EXHIBIT NO.	DESCRIPTION
1	Civil Action Coversheet
2	Summons
3	Complaint
4	08/25/2015 Certified Mail/Return Receipt Requested from Patrick W. Carr to Pura Life Fiestas Center enclosing the Civil Action Coversheet, Summons and Complaint.
5	08/25/2015 Certified Mail/Return Receipt Requested from Patrick W. Carr to Pura Life Fiestas Center enclosing the Civil Action Coversheet, Summons and Complaint returned "unclaimed and unable to forward" on September 9, 2015.
6	Affidavit of Service on Zaida Altamirano
7	08/25/2015 Certified Mail/Return Receipt Requested from Patrick W. Carr to Daniel's Espresso, Inc. enclosing the Civil Action Coversheet, Summons and Complaint.
8	08/25/2015 Certified Mail/Return Receipt Requested from Patrick W.

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EXHIBIT NO.	DESCRIPTION
	Carr to Daniel's Espresso, Inc.'s Registered Agent enclosing the Civil Action Coversheet, Summons and Complaint returned "attempted - not known" on September 28, 2015.
9	08/25/2015 Certified Mail/Return Receipt Requested from Patrick W. Carr to Daniel's Espresso, Inc. enclosing the Civil Action Coversheet, Summons and Complaint returned "unclaimed and unable to forward" on September 22, 2015.
10	09/22/2015 Office of the Secretary of State to Daniel's Espresso, Inc. enclosing Civil Cover Sheet, Summons and Complaint.
11	08/25/2015 Certified Mail/Return Receipt Requested from Patrick W. Carr to Daniel's Restaurant and Lounge enclosing the Civil Action Coversheet, Summons and Complaint.
12	08/25/2015 Certified Mail/Return Receipt Requested from Patrick W. Carr to Daniel's Restaurant and Lounge enclosing the Civil Action Coversheet, Summons and Complaint returned "unclaimed - unable to forward".
13	Affidavit of Non-Service on Gail Milstain, 08/27/2015
14	Affidavit of Service on Aviv Ben Yair, 09/02/2015
15	Affidavit of Non-Service on Kfir Gispain, 08/31/2015
16	Affidavit of Due Diligence on Nicole Naglieri, 09/29/2015
17	Affidavit of Service on Nicole A. Nagliere, 10/13/2015
18	Stipulation of Dismissal of Nicole Naglieri, 11/30/2015
19	08/25/2015 Certified Mail/Return Receipt Requested from Patrick W. Carr to Beach Market, LLC enclosing the Civil Action Coversheet, Summons and Complaint.
20	08/25/2015 Certified Mail/Return Receipt Requested from Patrick W. Carr to Beach Market, LLC enclosing the Civil Action Coversheet, Summons and Complaint returned "unknown at this address" on September 4, 2015.
21	09/15/2015 Office of the Secretary of State to Beach Market, LLC enclosing Civil Cover Sheet, Summons and Complaint.
22	Affidavit of Service on Mike Larrow, 08/28/2015
23	09/29/2015 Affidavit for Publication
24	09/29/2015 Order for Publication
25	11/16/2015 Affidavit of Publication
26	11/16/2015 Affidavit of Default
27	12/21/2015 Order of Default and Order of Reference
28	01/29/2016 Notice of Damages Hearing
29	04/19/2016 Order Denying Motion to Open Default as to Defendants Zlida Altamirano and Pura Life Fiestas Center
30	04/28/2016 Notice of Damages Hearing
31	04/28/2016 Certificate of Service re Notice of Damages Hearing
32	Ronis Acosta Medical Bill Itemization

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EXHIBIT NO.	DESCRIPTION
33	Ronis Acosta Lost Wage Statement
34	Photo of Ronis Acosta
35	Consumer Information - Cost of a Prosthetic Arm

David Berry
DAVID BERRY
FOR THE FIRM

Patrick W. Carr, Esquire
SC Bar No. 15585; Fed. I.D. No. 07190
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E-mail: patrick@hiltonheadlawyers.com
Attorneys for Plaintiff

Dated: June 16, 2012

Hilton Head Island, SC

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