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When Is a Default Judgment Not a Default Judgment?

New York state practitioners often view motions for default judgment against non-appearing defendants as a slam dunk. After all, the Second Department standard for granting default judgment is extremely liberal – a "defaulting defendant admits all traversable allegations in the complaint, including the basic issue of liability, and [] the sole issue to be determined at an inquest is the extent of damages sustained by the plaintiff." But before we count our chickens, a case in Westchester Supreme Court should serve as a cautionary tale to litigants and their attorneys – courts still retain discretion to dismiss claims in the interests of justice, even if the defendant is a complete no show – and they will do so if the plaintiffs fail to demonstrate the viability of their claims.

The Case: *Smith v. Roma 390 Restaurant Corp*

In *Smith v. Roma 390 Restaurant Corp.*, Index No. 65954/2015 (Westchester Sup. Ct. August 6, 2019), the plaintiff sought default judgment against two non-appearing restaurant defendants arising out of a slip and fall in an adjacent parking lot. Other defendants had been dismissed from the case on summary judgment based on an affidavit from the Yonkers Parking Authority (YPA) that it alone owned the parking lot. Even though it was clear that the defaulting defendants did not own the parking lot and, therefore, could not be liable, the plaintiff and his counsel pressed on with the default judgment proceedings, presumably hoping that the liberal standard for default judgment motions would trump the clear absence liability. Justice Charles Wood, however, was not having it. Criticizing the plaintiff and his counsel for pursuing default judgment in the face of a dispositive summary judgment decision establishing YPA's sole liability, the court held that, although the standard for default judgment is liberal in the Second Department, the motion for default had to be denied in the interests of justice where it was undisputed that the defaulting defendant had no liability. As Justice Wood concluded in dismissing the claim: "Just because you can do it, doesn't make it right."

Takeaway

The Second Department standard for default judgments is generous, but the trial courts retain discretion to dismiss bogus claims. Plaintiffs would be well served to marshal at least some evidence of liability in case it is needed in support of a default judgment motion; and their counsel should remember that we are ethically obligated*not* to advance meritless claims.