

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. MARVIN E. SEGAL

Justice

SHORT FORM ORDER

IAS PART 5

NASSAU COUNTY

LOUISE KELLY,

INDEX No. 001015/00
MOTION DATE: 3/13/01
MOTION No. 01

Plaintiff(s),

-against-

COUNTY OF NASSAU, TOWN OF HEMPSTEAD,
And DAVID FAILS,

Defendant(s).

Upon the following papers read on this motion

- Notice of Motion/ Order to Show Cause..... X
- Answer.....
- Reply.....
- Memorandum of Law.....

it is ORDERED that the unopposed motion by plaintiff Louise Kelly for a default judgment against defendant David Fails is denied, without prejudice to renewal upon proper papers.

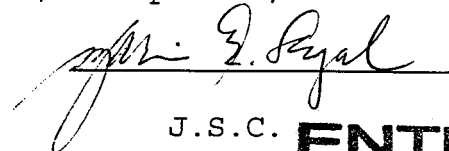
This is an action arising out of a slip and fall on a public sidewalk. Plaintiff seeks a default judgment against defendant David Fails. Pursuant to CPLR 3215 (f) (formerly CPLR 3215 [e]), on any application for a judgment by default the applicant "shall

file ... proof by affidavit made by the party of the facts constituting the claim ..". A verified complaint may serve as proof of the facts. However, "[a] complaint verified by an attorney ... is insufficient for purposes of CPLR 3215(e) when the attorney lacks personal knowledge of the facts constituting the claim" (*Joosten v. Gale*, 129 AD2d 531, 534). Plaintiff has failed to produce the requisite affidavit or verified complaint.

Moreover, plaintiff brings this action against the defaulting defendant alleging liability on the grounds that he is the owner of the premises adjoining the alleged defective sidewalk where plaintiff tripped, and that he failed to keep the sidewalk in good repair. It is well settled that "[i]f tort liability is to be imposed upon an abutting owner, it must be unequivocally set forth in the express words of a statute, charter or ordinance" (*Jacques v. Maratskey*, 41 AD2d 883). Plaintiff has not pleaded any statute, charter or ordinance imposing tort liability upon adjoining landowners such as defendant Fails for failure to keep the public sidewalk in good repair. Accordingly, her complaint fails to state a cause of action against Fails (see, *Jacques v. Maratskey*, *supra*)

All parties shall appear for a preliminary conference in the Supreme Court building, lower level, on April 2, 2001.

DATED: March 14, 2001


J.S.C.

ENTERED

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MAR 16 2001

NASSAU COUNTY
COUNTY CLERK'S OFFICE