

DOCKET NO. CV236131555-S : STATE OF CONNECTICUT  
ASHLY WILSON : SUPERIOR COURT  
 : JUDICIAL DISTRICT OF NEW HAVEN  
V. : AT NEW HAVEN  
 :  
ANTHONY PHARAHON GARCIA, ET AL. : June 10, 2024

**MEMORANDUM OF DECISION**

**MOTION FOR JUDGMENT ON DEFAULT (#121)**

**STATEMENT OF CASE AND PROCEDURAL HISTORY**

The plaintiff, Ashly Wilson commenced this negligence action against the defendants, Anthony Pharahon Garcia, Jahaira Rivera, and Galen Wilson. The action arises out of a collision that occurred on June 18, 2022. The plaintiff claims that the defendants Anthony Pharahon-Garcia and Galen Wilson were negligently and carelessly operating vehicles that collided with the plaintiff's vehicle resulting in injuries and damages. The plaintiff alleges a number of ways in which the co-defendants Garcia and Wilson were negligent. The plaintiff has sued the co-defendant Jahaira Rivera based on vicarious liability as the owner of the vehicle operated by co-defendant Garcia.

On June 20, 2023, the plaintiff filed a motion for default (#110) against co-defendant Galen Wilson for his failure to appear. The court granted the motion on June 28, 2023 (#110.10). The plaintiff has not pursued any further action on the court's ruling on the motion. On February 13, 2024, the co-defendants, Pharahon-Garcia and Jahaira, pursuant to Practice Book 17-20 (d) filed a motion for judgment on the default (#120). On February 26, 2024, this court denied the motion as no military affidavit was attached to the motion in support thereof

(#120.10). On March 19, 2024, the defendants refiled their motion for judgment on default (#121) and attached a military affidavit to substantiate that co-defendant Wilson was not in the military. On March 20, 2024, the plaintiff filed an objection to the motion for judgment (#122) on grounds that the co-defendants lack the ability to pursue further action against the non-appearing party, which would encompass a request for default and judgment and subsequent relief, which plaintiff claims, falls to the plaintiff and not the defendants. Essentially the plaintiff is arguing that the co-defendants lack standing to move for a judgment on default under § 17-20.

The plaintiff argues that Practice Book § 17-24 (a) states that “in any action based upon an express or implied promise to pay a definite sum and claiming only liquidated damages, which may include interest, a reasonable attorney’s fee and other lawful charges, the procedures set forth in Practice Book §§ 17-20, and 17-25 through 17-28 shall be followed, if there is a default of appearance.” The plaintiff argues that the defendants lack the grounds to claim such express or implied promise to pay a definite sum as to the co-defendant Wilson as they have provided no notice of intent to bring any action against Wilson, whether through apportionment, cross-claim or other appropriate means. The plaintiff further argues that Practice Book § 17-25 (a-c) states that the burden to pursue judgment and subsequent relief from a non-appearing defendant falls to the plaintiff. The plaintiff argues that the motion for default for failure to appear and judgment is a procedural tool for the plaintiff to utilize to recover its fees and costs from a nonappearing defendant.

The motion for judgment on default appeared on this court’s April 1, 2024, short calendar as take papers.

## LEGAL ANALYSIS

Practice Book § 17-20 (d) provides: “Except as provided in Sections 17-23 through 17-30, motions for default for failure to appear shall be acted on by the clerk not less than seven days from the filing of the motion and shall not be printed on the short calendar. The motion shall be granted by the clerk if the party who is the subject of the motion has not filed an appearance. The provisions of Section 17-21 shall not apply to such motions, but such provisions shall be complied with before a judgment may be entered after default. If the defaulted party files an appearance in the action prior to the entry of judgment after default, the default shall automatically be set aside by operation of law. A claim for a hearing in damages shall not be filed before the expiration of fifteen days from the entry of a default under this subsection, except as provided in Sections 17-23 through 17-30.” The above provisions set forth in the above provisions provide for the procedural mechanism to obtain a default or nonsuit for failing to appear. The relevant provisions for obtaining a judgment on default for failure to appear are set forth in Practice Book §§ 17-24 through 17-28.

Practice Book § 17-24 is a procedural mechanism by which a creditor may seek to collect on an express or implied promise to pay a definite sum and states: “(a) In any action based upon an express or implied promise to pay a definite sum and claiming only liquidated damages, which may include interest, a reasonable attorneys fee and other lawful charges, the procedure set forth in Section 17–20 and in Sections 17–25 through 17–28 shall be followed, if there is a default of appearance. A certificate of closed pleadings shall not be filed in matters which fall within the scope of these rules because such matters shall not proceed on the inventory of pending cases requiring a hearing in damages. (b) When moving for default and judgment

pursuant to Sections 17–25 through 17–28, a party shall move for default and judgment on forms prescribed by the office of the chief court administrator.”

Practice Book § 17-25 provides in relevant part that “(a) The plaintiff shall file a motion for default for failure to appear and judgment, a bill of costs, a proposed judgment and notice to all parties and, if applicable, a request for an order of weekly payments pursuant to Section 17-26.” Section 17-25 (a) sets forth what documents must accompany the motion and provides: “The plaintiff shall file a motion for default for failure to appear and judgment, a bill of costs, a proposed judgment and notice to all parties and, if applicable, a request for order of weekly payments pursuant to Section 17-26.” Subsection (b) provides that “The motion shall have attached to it the following affidavits:

(1) An affidavit of debt signed by the plaintiff or by an authorized representative of the plaintiff who is not the plaintiff's attorney. The affidavit shall state the amount due, or the principal owed and contain an itemization of interest, attorney's fees and other lawful charges claimed. The affidavit shall contain a statement that any documents attached to it are true copies of the originals. Any plaintiff claiming interest shall separately state the interest and shall specify the dates from which and to which interest is computed, the rate of interest, the manner in which it was calculated and the authority upon which the claim for interest is based.

(A) If the instrument on which the contract is based is a negotiable instrument or assigned contract, the affidavit shall state that the instrument or contract is now owned by the plaintiff, and a copy of the executed instrument or contract shall be attached to the affidavit. If the plaintiff is not the original party with whom the instrument or contract was made, the

plaintiff shall either (i) attach all bills of sale back to the original creditor and swear to its purchase of the debt from the last owner in its affidavit of debt or (ii) in the affidavit of debt, recite the names of all prior owners of the debt with the date of each prior sale and also include the most recent bill of sale from the plaintiff's seller and swear to its purchase of the debt from its seller in the affidavit of debt.

(B) If the plaintiff claims any lawful fees or charges other than interest, including a reasonable attorney's fee, the plaintiff shall attach to the affidavit of debt a copy of the portion of the contract containing the terms of the contract providing for such fees or charges and the amount claimed.

(C) If a claim for a reasonable attorney's fee is made, the plaintiff shall include in the affidavit of debt the reasons for the specific amount requested in order that the judicial authority may determine the relationship between the fee requested and the actual and reasonable costs which are incurred by counsel.

(2) A military affidavit as required by § 17-21.

Section 17-25 (c) provides that the judicial authority may require "the submission of additional written documentation or the presence of the plaintiff, the authorized representative of the plaintiff, or other affiants, as well as counsel before the court prior to rendering judgment if it appears to the judicial authority that additional information or evidence is required in order to enter judgment."

Section 17-26 sets forth the procedure for the issuance of an order of weekly payments; § 17-27 sets forth the procedure for the entry of judgment and § 17-28 sets forth the procedure for enforcement of the judgment.

The court agrees with the plaintiff that the Practice Book provisions pursuant to which the co-defendants filed their motion for judgment on default are not applicable here. The present action is not based upon an express or implied promise to pay a definite sum and claiming only liquidated damages. This is a negligence action brought by the plaintiff directly against all three defendants wherein the plaintiff claims that two of the defendants operated their motor vehicles negligently and a third defendant is vicariously liable based on her ownership of one of the vehicles alleged to have been operated negligently. Moreover, the co-defendants have not filed a crossclaim or an apportionment complaint against Wilson. Indeed, in their special defenses co-defendants “do not respond to the allegations of Count 3, as said count is not directed against them” but rather is directed against co-defendant Wilson.

The court analogizes this situation to the situation where a co-defendant objects to a defendant’s motion for summary judgment that has not been objected to by the plaintiff. “The defendant's position that BDC does not have standing to object to its motion for summary judgment raises a question that has not been addressed by our appellate courts. See *Wiggins v. Henry Urena Services, LLC*, Superior Court, judicial district of Fairfield, Docket No. CV-18-6078768-S (June 26, 2020, *Stevens, J.*) (noting that defendant's position that co-defendant does not have standing to object to its motion for summary judgment has not been addressed by either appellate court). “[T]he status of a “party” as a co-defendant [does not] preclude it from resisting a motion for summary judgment filed by a co-defendant. . . . On the other hand, the

fact that a defendant is a “party” does not necessarily mean that the defendant has a right to oppose a co-defendant’s motion for summary judgment. . . . The question should . . . be resolved by the facts of a particular case as to whether a co-defendant has standing in this situation.’ (Citations omitted; internal quotation marks omitted.) *Robertson v. Delsanto*, Superior Court, judicial district of Hartford, Docket No. CV-98-0578887-S (December 9, 1999, *Teller, J.*) (26 Conn. L. Rptr. 111, 113). Although the trial court decisions are split on this question; compare *id.* (denying co-defendant's objection because he was not adverse party and lacked standing to oppose summary judgment motion by another defendant without cross-pleadings between them), with *Steele v. Johnson*, Superior Court, judicial district of New Britain, Docket No. CV-11-6010212-S (February 5, 2013, *Gleeson, J.*) (allowing co-defendant’s objection to defendant’s motion for summary judgment because it was exposed to greater liability and was, therefore, adverse); this court has adopted the liberal reading of Practice Book § 17-45 (b). See *Dawson v. New Haven*, Superior Court, judicial district of New Haven, Docket No. CV-08-5016831-S (October 26, 2009, *Wilson, J.*) (‘[w]here a defendant in his motion claims fault does not lie with him or her but with a co-defendant, the latter party certainly has a direct interest in the motion’ [internal quotation marks omitted]). As this court previously has adopted a liberal reading of the rule and finds the authorities cited by the defendant unpersuasive, the court agrees that BDC has a direct interest in said motion and will therefore consider its objection.” *Fanning v. Town of Branford*, Superior Court, judicial district of New Haven, CV-21-6115240-S (April 22, 2024, *Wilson, J.*).

The co-defendants have not alleged in their answer that fault does not lie against them, but rather with the co-defendant Wilson. Indeed, as previously stated they do not respond to

the allegations against Wilson. The co-defendants Pharahon-Garcia and Jahaira Rivera have only raised a comparative negligence claim against the plaintiff. Therefore, the co-defendants lack standing to move for judgment against co-defendant Wilson.

#### CONCLUSION

Accordingly, for the foregoing reasons co-defendants' motion for judgment on the default is denied and plaintiff's objection thereto is sustained.

Juris No. 421279

Wilson, J.