

5 CPAW

**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK**

**Present:**

**HON. THOMAS P. PHELAN,**

*Justice*

TRIAL/IAS, PART 10  
NASSAU COUNTY

RACHEL BELL, by Mother and Natural Guardian,  
RIMA BELL, and RIMA BELL, Individually,

Plaintiff(s),

-against-

MASTER CAR WASH, INC., CNL, INC.  
D/B/A MASTER CAR WASH, JAY LEE CHOI  
and JAMES S. LEE,

Defendant(s).

ORIGINAL RETURN DATE: 12/17/03  
SUBMISSION DATE: 12/17/03  
INDEX No.: 5469/03

MOTION SEQUENCE #1

The following papers read on this motion:

|                                     |   |
|-------------------------------------|---|
| Notice of Motion.....               | 1 |
| Correspondence and Stipulation..... | 2 |

Motion by plaintiffs for a default judgment against defendant Master Car Wash, Inc. (Master) is denied without prejudice to renewal upon proper papers.

That portion of plaintiffs' motion which additionally sought summary judgment against defendants CNL, Inc. d/b/a Master Car Wash, Jay Lee Choi and James S. Lee has been withdrawn.

Plaintiffs have failed to provide a sufficient affidavit of facts constituting the claim (CPLR 3215(f)). The affidavit of Rima Bell dated November 25, 2003 does not address the circumstances of infant plaintiff Rachel Bell's slip and fall as Rima Bell is without personal knowledge of how the accident occurred. The affidavit of non-party witness Adilene Zendejas dated November 20, 2003, while partially addressing what occurred, does not address the cause of infant plaintiff's fall, as she too is without personal knowledge. Nor is the complaint, verified by plaintiffs' counsel, sufficient despite the provisions of CPLR 3215(f) since plaintiffs' counsel are also without personal knowledge (Ferrer v. Malpeso, 210 AD2d 60; Joosten v. Gale, 129 AD2d 531, 534).

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Although plaintiffs provide what purports to be an affidavit from infant plaintiff, Rachel Bell, dated November 19, 2003 -- which otherwise would suffice -- it is rejected as not having been properly notarized.

The Court notes that pursuant to the Preliminary Conference Order dated January 9, 2004 this matter is scheduled for a compliance/certification conference before the undersigned on May 20, 2004 at 9:30 A.M.

This decision constitutes the order of the court.

Dated: 1-30-04

HON THOMAS P. PHELAN

*Thomas P. Phelan*  
J.S.C.

ENTERED

FEB 04 2004

NASSAU COUNTY  
COUNTY CLERK'S OFFICE