NEW YORK SUPREME COURT - COUNTY OF BRONX
PART 32

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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BRUCKNER PARTNERS, LLC,

Plaintiff,

- against -

FRAMING & GILDING STUDIO, INC. and WENDY CHANG,

Defendants.

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Index No. **814991/2021E**

Hon. **FIDEL E. GOMEZ**
Justice

The following papers numbered 1 to 6, read on these motions, noticed on 12/14/2021 and 1/10/22, and duly submitted as no. 1 and 2 on the Motion Calendar of 2/9/2022.

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	1, 4	
Answering Affidavit and Exhibits	2, 5	
Replying Affidavit and Exhibits	3, 6	
Notice of Cross-Motion - Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers-Order of Reference		
Memorandum of Law		

Plaintiff's motions are decided in accordance with the Decision and Order annexed hereto.

Dated: 2/28/2022

Hon. _____
FIDEL E. GOMEZ, A.J.S.C.

1. CHECK ONE..... ☐ CASE DISPOSED X NON-FINAL DISPOSITION

2. MOTION IS..... X GRANTED (#2) X DENIED (#1) ☐ GRANTED IN PART ☐ OTHER

3. CHECK IF APPROPRIATE..... ☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ DO NOT POST
☐ FIDUCIARY APPOINTMENT ☐ REFEREE APPOINTMENT
X NEXT APPEARANCE DATE: April 11, 2022 at 10:00 a.m. (Inquest)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

----------X

BRUCKNER PARTNERS, LLC,

Plaintiff,

- against -

FRAMING & GILDING STUDIO, INC. and WENDY CHANG,

Defendants.

----------X

DECISION AND ORDER

Index No. **814991/2021E**

Plaintiff Bruckner Partners, LLC ("Plaintiff") moves by order to show cause for an order directing Defendant Framing & Gilding Studio, Inc. (the "Tenant") to pay use and occupancy: (1) beginning on December 1, 2021, and continuing for the pendency of this action, and (2) in the amount of $60,608.80 for the period between October 2020 and November 2021, or in the alternative, to post an undertaking in the same amount. Plaintiff also moves for default judgment against the Tenant and Defendant Wendy Chang (the "Guarantor") (collectively, the "Defendants") pursuant to CPLR § 3215. Defendants oppose both motions.

For the reasons which follow, Plaintiff's motion for default judgment is granted in part, and Plaintiff's order to show cause is denied as moot.

BACKGROUND:

On November 2, 2021, Plaintiff commenced the instant action against Defendants by filing a summons and verified complaint, which alleges causes of action for breach of lease and breach of guaranty. The complaint is verified by Babak Zar, the managing principal for Plaintiff.

The complaint alleges that Plaintiff is the landlord and owner of a commercial property located at 2417 Third Avenue, Bronx, NY (the "Building"). Plaintiff alleges that it is the successor in interest to the former landlord, Sobro Lofts, LLC ("Sobro") (Compl. ¶ 9). Plaintiff alleges that the Tenant occupies Suite 513-514 in the Building (the "Premises").

The complaint alleges that the tenancy is governed by an Agreement of Lease dated November 10, 2017 (the "2017 Lease") and an Amendment to Lease dated January 23, 2019 (the "2019 Amendment"), which modified and extended the 2017 Lease (collectively, the "Lease")

(Compl. ¶ 10). The complaint alleges that the Guarantor executed a personal guaranty, under which she unconditionally guaranteed all obligations of the Tenant under the Lease (Compl. ¶ 13).

The complaint alleges that the Tenant defaulted under the Lease by failing to make all rent payments in full. Plaintiff alleges that the Tenant's payment of $2,169.37 in September of 2020 was the last payment it made to Plaintiff under the Lease (Compl. ¶ 32). Plaintiff also alleges that the Tenant defaulted under the Lease by failing to maintain and deliver proof of the requisite insurance to Plaintiff. Plaintiff further alleges that the Tenant defaulted by failing to replenish its security deposit (Compl. ¶ 34).

Plaintiff alleges that these defaults have been willful, and that Defendants have refused performance despite demands and service of notices of default by Plaintiff (Compl. ¶ 35-36). Specifically, Plaintiff alleges that on October 4, 2021, it issued a 5-day demand for replenishment of the security deposit, a notice of default demanding payment of Fixed Rent, and a 15-day notice of default demanding delivery of the required insurance policies and proof of payment of premiums. Plaintiff alleges that Defendants did not respond or cure any of these defaults (Compl. ¶ 37-46).

As a result, Plaintiff alleges that it is entitled to: (1) all unpaid rents and monetary obligations accrued under the Lease and which continue to accrue; (2) accelerated rents through the natural term of the Lease, payable as liquidated damages with a four percent (4%) discount; (3) reasonable legal fees and costs incurred by Plaintiff in connection with the enforcement of its rights under the Lease, including reasonable attorney's fees; (4) default liabilities, including applicable late charges and interest; (5) the right to recover the Rent Abatement Amount of $8,236.66; and (6) other monetary obligations and damages which continue to accrue under the Lease (Compl. ¶ 47).

On November 18, 2021, Plaintiff filed the instant order to show cause. On February 9, 2022, the motion was marked fully submitted.

On December 9, 2021, Defendants filed a notice of appearance.

On December 15, 2021, Plaintiff filed the instant motion for default judgment. On February 9, 2022, the motion was marked fully submitted.

DISCUSSION:

The Court will consider Plaintiff's motion for default judgment first, as a determination on the motion may render Plaintiff's order to show cause moot.

Plaintiff's Motion for Default Judgment:

Plaintiff seeks a default judgment: (1) against the Tenant under the first cause of action for breach of lease in the amount of $86,085.00, which represents the liquidated damages under this claim; (2) against the Guarantor under the second cause of action for breach of guaranty in the amount of $86,085.00, which represents liquidated damages under this claim; and (3) an order referring this matter to a Special Referee for an inquest to set the amount of unliquidated damages due under the Lease.

Plaintiff argues that Defendants were properly served with the summons and complaint. Plaintiff argues that although Defendants appeared by filing a notice of appearance, they have not filed an answer, and the time to do so has expired.

CPLR § 3215(a) provides in relevant part that: "When a defendant has failed to appear, plead or proceed to trial of an action reached and called for trial . . . the plaintiff may seek a default judgment against him."

CPLR § 3215(f) provides in relevant part that:

> On any application for judgment by default, the applicant shall file proof of service of the summons and the complaint . . . and proof of the facts constituting the claim, the default and the amount due by affidavit made by the party. . . Proof of mailing the notice required by subdivision (g) of this section, where applicable, shall also be filed.

(*See also Zelnik v Biedermann Industries U.S.A., Inc.*, 242 AD2d 227 [1st Dept 1997]; *Stevens v Law Office of Blank & Star, PLLC*, 155 AD3d 917 [2d Dept 2017]). Thus, "[o]n a motion for leave to enter a default judgment against a defendant based on the failure to answer or appear, a plaintiff must submit proof of service of the summons and complaint, proof of the facts constituting the cause of action, and proof of the defendant's default" (*Deutsche Bank National Trust Company v Hall*, 185 AD3d 1006, 1008 [2d Dept 2020]; *Fried v Jacob Holding, Inc.*, 110 AD3d 56, 59 [2d Dept 2013]; *Pampalone v Giant Bldg. Maintenance, Inc.*, 17 AD3d 556, 557 [2d Dept 2005]). "To demonstrate 'the facts constituting the claim' the movant need only submit sufficient proof to

enable a court to determine that 'a viable cause of action exists'. CPLR 3215(f) expressly provides that a plaintiff may satisfy this requirement by submitting the verified complaint" (*Fried*, 110 AD3d 56 at 59-60).

In support of its motion, Plaintiff submitted, *inter alia*, the affirmation of its counsel; the affidavit of James Tamborlane, a manager of Plaintiff; the 2017 Lease; the 2019 Amendment; affidavits of service upon Defendants; notices of default; a rent statement; and an affirmation of additional mailing pursuant to CPLR § 3215(g).

As a preliminary matter, the Court notes that although Defendants filed a notice of appearance on December 9, 2021, they are still required to serve an answer to the complaint, as the complaint makes allegations against which they are required to defend (*21st Mortgage Corporation v Raghu*, 197 AD3d 1212, 1216 [2d Dept 2021] ["Although a defendant 'appears' within the meaning of CPLR 320(a) by merely serving a notice of appearance, service of a notice of appearance does not 'absolve a defendant from complying with the time restrictions imposed by CPLR 320(a) which govern the service of an answer or the making of a motion pursuant to CPLR 3211. Accordingly, a defendant who serves a timely notice of appearance may nevertheless default in answering"]; *Tsionis v Eriora Corp.*, 123 AD3d 694, 696 [2d Dept 2014] [holding that the defendant properly appeared by notice of appearance and was not required to serve an answer because the complaint did not set forth any allegations that the defendant was required to defend against]).

The Tenant's Default:

The affidavit of service dated November 10, 2021 states that the Tenant was served with the summons and verified complaint on November 10, 2021, by service upon the Secretary of State of the State of New York pursuant to Business Corporation Law § 306.

BCL § 306(b)(1) states, in relevant part, that:

> Service of process on the secretary of state as agent of a domestic or authorized foreign corporation shall be made by personally delivering to and leaving with the secretary of state or a deputy, or with any person authorized by the secretary of state to receive such service, at the office of the department of state in the city of Albany, duplicate copies of such process together with the statutory fee, which fee shall be a taxable disbursement. Service of process on such corporation shall be complete when the secretary of state is so served.

Service upon the Secretary of State as agent for a defendant corporation constitutes valid service (*Union Indem. Ins. Co. of New York v 10-01 50th Ave. Realty Corp.*, 102 AD2d 727, 728 [1st Dept 1984]; *Perkins v 686 Halsey Food Corp.*, 36 AD3d 881, 881 [2d Dept 2007]). Service of process is complete when plaintiff serves the Secretary of State, "irrespective of whether the process subsequently reache[s] the corporate defendant" (*Fisher v Lewis Construction NYC Inc.*, 179 AD3d 407, 408 [1st Dept 2020]).

Here, the Tenant was served with the summons and verified complaint on November 10, 2021, the date on which the Secretary of State was served with the summons and verified complaint (BCL § 306[b][1]). As such, the Tenant had until December 10, 2021 to serve an answer. (CPLR 320[a]). The Tenant did not serve an answer by that date and is thus in default.

The affidavit of service dated November 16, 2021 states that the Tenant was also served with the summons and verified complaint on November 12, 2021, by personal delivery to a general agent authorized to accept a copy at the Premises. Presumably, the service was effectuated pursuant to CPLR § 311(a).

CPLR § 311(a) provides, in relevant part, that:

> Personal service upon a corporation . . . shall be made by delivering the summons as follows: 1. upon any domestic or foreign corporation, to an officer, director, managing or general agent, or cashier or assistant cashier or to any other agent authorized by appointment or by law to receive service. A business corporation may also be served pursuant to section three hundred six or three hundred seven of the business corporation law.

"A process server's affidavit stating that personal service was effected by delivering a copy of the summons with notice to an authorized agent, and providing a description of that person, constitutes prima face evidence of proper service pursuant to CPLR 311(a)(1)" (*Purzak v Long Island Housing Services, Inc.*, 149 AD3d 989, 991 [2d Dept 2017]; *Rosario v NES Medical Services of New York, P.C.*, 105 AD3d 831, 832 [2d Dept 2013]).

Here, the Tenant was served with the summons and verified complaint on November 12, 2021 by personal delivery at the Premises. Pursuant to this service, the Tenant had until December 2, 2021 to answer (CPLR 320[a]). The Tenant did not serve an answer by that date and is thus in default. The Court notes that the time to answer the complaint pursuant to this service is shorter

than the time allowed by the service made pursuant to BCL § 306. This is of no import, as the Tenant failed to serve an answer in response to either service.

Plaintiff has demonstrated compliance with the additional mailings required by CPLR § 3215(g), despite demonstrating that compliance was not required, as the Tenant appeared in this action by filing a notice of appearance.

The Guarantor's Default:

The affidavit of service dated November 16, 2021 states that the Guarantor was served with the summons and verified complaint pursuant to CPLR § 308(2) by delivery of a copy of the summons and verified complaint to a person of suitable age and discretion at the Premises on November 12, 2021, and by mailing of a copy to the Premises on November 16, 2021.

A review of the Court records demonstrates that the affidavit of service was filed with the Court on November 18, 2021. As such, service was complete on November 28, 2021 (CPLR § 308[2] ["proof of such service shall be filed with the clerk of the court designated in the summons within twenty days of either such delivery or mailing, whichever is effected later; service shall be complete ten days after such filing"]). Thus, the Guarantor had until December 28, 2021 to serve an answer (CPLR 320[a] ["if the summons was served on the defendant . . . pursuant to . . . subdivision two . . . of section 308 . . . the appearance shall be made within thirty days after service is complete"]).

Plaintiff brought the instant motion for default judgment on December 15, 2021, prior to the Guarantor's default in answering the complaint. As such, the motion was made prematurely.

Accordingly, Plaintiff's motion for default judgment against the Guarantor is denied.

Breach of the Lease:

"A lease, like any other contract, is to be interpreted in light of the purposes sought to be attained by the parties" (*Farrell Lines, Inc. v City of New York*, 30 NY2d 76, 82 [1972]; *Accurate Copy Service of America, Inc. v Fisk Bldg. Associates, LLC*, 72 AD3d 456, 457 [1st Dept 2010]). "It is well settled that a contract is to be construed in accordance with the parties' intent, which is generally discerned from the four corners of the document itself. Consequently, 'a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms'" (*MHR Capital Partners LP v Presstek, Inc.*, 12 NY3d 640, 645 [2009];

Bailey v Fish & Neave, 8 NY3d 523, 528 [2007]). This is especially true "in the context of real property transactions, where commercial certainty is a paramount concern, and where … the instrument was negotiated between sophisticated, counseled business people negotiating at arm's length" (*Vermont Teddy Bear Co., Inc. v 538 Madison Realty Co.*, 1 NY3d 470, 475 [2004]). As such, "the unambiguous terms of a lease will not be disregarded 'for the purpose of alleviating a hard or oppressive bargain'" (*Accurate Copy Service of America, Inc.*, 72 AD3d 456 at 457).

"[R]ules of construction of contracts require, whenever possible, that an agreement should be given a 'fair and reasonable interpretation'" (*Farrell Lines, Inc.*, 30 NY2d 76 at 83). "[A] contract should not be interpreted in such a way as would leave one of its provisions substantially without force" (*Albanese v Consolidated Rail Corp.*, 245 AD2d 475, 476 [2d Dept 1997]). A court "'may not by construction add or excise terms, nor distort the meaning of those used and thereby make a new contract for the parties under the guise of interpreting the writing" (*Bailey*, 8 NY3d 523 at 528).

"Whether a contract is ambiguous is a question of law and extrinsic evidence may not be considered unless the document itself is ambiguous" (*Bailey*, 8 NY3d 523 at 528). To the extent that any provisions in a lease are ambiguous, they are to be construed against the party who prepared it (*Preferred Mut. Ins. Co. v Pine*, 44 AD3d 636, 639 [2d Dept 2007]).

The elements of a cause of action for breach of contract are: (1) the existence of a contract, (2) the plaintiff's performance thereunder, (3) the defendant's breach thereof, and (4) resulting damages from the breach (*Markov v Katt*, 176 AD3d 401, 401-402 [1st Dept 2019]; *Harris v Seward Park Housing Corp.*, 79 AD3d 425, 426 [1st Dept 2010]; *Fuentes v LOMTO Federal Credit Union*, 200 AD3d 1032, 1033 [2d Dept 2021]; *East Ramapo Central School District v New York Schools Insurance Reciprocal*, 199 AD3d 881, 886 [2d Dept 2021]; *Plainview Properties SPE, LLC v County of Nassau*, 181 AD3d 731, 733 [2d Dept 2020]).

Plaintiff has demonstrated the existence of the lease by submitting a copy of the Lease, entered into between Sobro and the Tenant. The verified complaint, as well as Mr. Tamborlane's affidavit, state that Plaintiff is the successor in interest to Sobro (Compl. ¶ 9; Affidavit of James Tamborlane, ¶ 4, fn. 1).

Plaintiff has demonstrated that it complied with the terms of the Lease by, *inter alia*, serving notices of default on Defendants upon their defaults (Compl. ¶ 37-46; Affidavit of James Tamborlane, ¶ 12).

Plaintiff has demonstrated Defendants' default under the Lease by submitting its verified complaint and the affidavit of Mr. Tamborlane, both of which state that Defendants failed to make rent payments after September 2020, failed to maintain and deliver proof of the requisite insurance, and failed to replenish the security deposit (Compl. ¶ 32, 34; Affidavit of James Tamborlane, ¶ 12).

Plaintiff has also demonstrated resulting damages by the affidavit of Mr. Tamborlane, who states that in light of the Defendants' defaults, Plaintiff is entitled to the full range of default remedies available under the Lease. He states that between October 2020 and December 2021, $76,881.77[1] in basic reoccurring Fixed Rent and Additional Rent has accrued under the Lease. Additionally, he asserts that Plaintiff is entitled to $8,236.66 as the Rent Abatement amount under paragraph 38(B) of the Lease. Additionally, he asserts that Plaintiff is entitled to $12,354.99 for the security deposit. As such, he states that Plaintiff is owed liquidated damages in the total amount of $86,085.00 (Affidavit of James Tamborlane, ¶ 14-17).

Mr. Tamborlane also asserts that there are a broad range of unliquidated default obligations recoverable from Defendants, including accelerated rents recoverable through the remaining term of the Lease, additional payments for many other categories of default remedies such as recovery of holdover rents; and payment of interest, fees and costs incurred in enforcement of the Lease, including reasonable attorney's fees (Affidavit of James Tamborlane, ¶ 19).

Accordingly, Plaintiff has demonstrated that it is entitled to default judgment on its cause of action for breach of the lease against the Tenant.

The Court notes that, as Defendants argue, the affidavit of Mr. Tamborlane dated December 14, 2021, filed with Plaintiff's motion on December 15, 2021, is not signed by Mr. Tamborlane. However, on December 17, 2021, Plaintiff re-filed a signed copy of Mr. Tamborlane's affidavit. Plaintiff's failure to file a properly signed copy of the affidavit with its motion is a "mistake, omission, defect or irregularity" that may be disregarded by this Court pursuant to CPLR § 2001. In light of the fact that the two affidavits are identical except for the lack of a signature on the previously filed affidavit, and Plaintiff's prompt filing of the properly signed affidavit, the Court finds that no substantial right of Defendants has been prejudiced. (*See*

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[1] A review of the rent statement in Plaintiff's Exhibit 4 demonstrates that the sum of the base rent and additional rent is $77,848.34, not $76,881.77, as stated in Mr. Tamborlane's affidavit. However, this does not change the total amount sought by Plaintiff, as the total combined amount of the base rent and additional rent plus the rent abatement in the amount of $8,236.66 is $86,085.00.

CPLR § 2001 ["At any stage of an action . . . the court may permit a mistake, omission, defect or irregularity . . . to be corrected, upon such terms as may be just, or, if a substantial right of a party is not prejudiced, the mistake, omission, defect or irregularity shall be disregarded"]; *Tagliaferri v Weiler*, 1 NY3d 605, 606 [2004]; *Miller v Board of Assessors*, 91 NY2d 82, 87 [1997]).

In opposition, Defendants seek to dismiss the complaint pursuant to CPLR 3211, arguing, *inter alia*, that Plaintiff does not have legal authority or capacity to sue; that the Covid-19 pandemic is an act of god and force majeure which excuses Defendants' obligations under the Lease and that they served a Hardship Declaration on Plaintiff; and that this Court lacks personal jurisdiction because Defendants were not served at the "registered address for service of process" and because they were not personally served as required by the Lease. Defendants argue, in the alternative, that they be permitted an extension of time to file an answer pursuant to CPLR 3211(f).

Defendants' opposition is unavailing for a few reasons. First, Defendants seek dismissal of the complaint pursuant to CPLR 3211(a), but have not made a cross-motion for such relief. Second, even if Defendants had made a cross-motion for dismissal, the motion would have been untimely. A motion made pursuant to CPLR 3211(a) must be made before service of the responsive pleading is required (CPLR 3211[e]; *U.S. Bank National Association v Gilchrist*, 172 AD3d 1425, 1426-1427 [2d Dept 2019] ["A motion to dismiss a complaint pursuant to CPLR 3211(a) may be based on various grounds . . . Such a motion must be made 'before service of the responsive pleading is required' (CPLR 3211[e]), or is untimely"]; *Hendrickson v Philbor Motors, Inc.*, 102 AD3d 251, 257 [2d Dept 2012] ["All motions under CPLR 3211 are to be made '[a]t any time before service of the responsive pleading' (CPLR 3211[e]), except that CPLR 3211 motions may be made after service of the party's answer in three circumstances: when the motion is based upon subdivision (a)(2) subject matter jurisdiction, (a)(7) failure to state a cause of action, or (a)(10) nonjoinder of a necessary party"]; *McGee v Dunn*, 75 AD3d 624, 625 [2d Dept 2010]). At the time Defendants opposed the instant motion, Defendants were already in default in answering the complaint. Defendants did not seek an extension of time to make their motion or address the untimeliness of their motion (*U.S. Bank Nat. Ass'n v Gonzalez*, 99 AD3d 694, 694-695 [2d Dept 2012]).

Third, having defaulted, Defendants cannot move for dismissal without first vacating their default and obtaining leave to serve a late answer (*U.S. Bank National Association*, 172 AD3d 1425 at 1428). Although Defendants seek an extension of time to plead pursuant to CPLR 3211(f), the rule is not applicable here. CPLR 3211(f) states that: "Service of a notice of motion under

subdivision (a) or (b) before service of a pleading responsive to the cause of action or defense sought to be dismissed extends the time to serve the pleading until ten days after service of notice of entry of the order". As explained above, Defendants did not make a motion at all. Additionally, as explained above, a motion made pursuant to (a) must be made before service of the responsive pleading is required (CPLR 3211[e]). At the time Defendants opposed the instant motion, Defendants were already in default in answering the complaint (*Wenz v Smith*, 100 AD2d 585, 586 [2d Dept 1984] ["A motion to dismiss pursuant to CPLR 3211 will extend the time in which a defendant may serve a responsive pleading only if the motion is made before that pleading was originally due and will not operate to relieve a party's default in pleading"]). Subsection (b) is not applicable to Defendants here, as the subsection refers to dismissal of defenses. Thus, Defendants' arguments for dismissal will be considered solely as opposition to Plaintiff's motion.

"In order to successfully oppose a [motion for] default judgment, a defendant must demonstrate a justifiable excuse for his default and a meritorious defense" (*Johnson v Deas*, 32 AD3d 253, 254 [1st Dept 2006]; *114 W. 26th St. Assoc. LP v Fortunak*, 22 AD3d 346, 346 [1st Dept 2005]; *Schimoler v Newman*, 175 AD3d 740, 741 [2d Dept 2019]). "The determination of whether a reasonable excuse has been established is a matter addressed to the broad discretion of the trial court based upon the circumstances of the particular case" (*Sharestates Investment, LLC v Hercules*, 166 AD3d 700, 701 [2d Dept 2018]). The court may consider "all relevant factors, including the extent of the delay, whether there has been prejudice to the opposing party, whether there has been willfulness, and the strong public policy in favor of resolving cases on the merits'" (*Fried*, 110 AD3d 56 at 60). Conclusory and unsubstantiated assertions are not sufficient to establish a reasonable excuse for the default (*Sharestates Investments, LLC*, 166 AD3d 700 at 701).

If a defendant fails to establish a reasonable excuse for its default, the Court need not consider whether the defendant demonstrated the existence of a meritorious defense to the complaint (*KI 12, LLC v Joseph*, 137 AD3d 750, 751 [2d Dept 2016]; *Diederich v Wetzel*, 112 AD3d 883, 884 [2d Dept 2013]).

Here, Defendants have not set forth any excuse for their delay in serving an answer. As such, the Court need not consider whether Defendants have any meritorious defenses to the complaint. Thus, Defendants have not demonstrated that a denial of Plaintiff's motion for default judgment is warranted. Additionally, Defendants do not contest the amount of liquidated damages Plaintiff seeks on this motion.

Plaintiff's Order to Show Cause:

Plaintiff moves by order to show cause for an order directing the Tenant to pay use and occupancy (1) beginning on December 1, 2021, and continuing for the pendency of this action, and (2) in the amount of $60,608.80 for the period between October 2020 and November 2021, or in the alternative, to post an undertaking in the same amount. Plaintiff's motion seeks damages duplicative of the damages sought on the motion for default judgment, which has been granted as against the Tenant.

Accordingly, Plaintiff's order to show cause is denied as moot.

SUMMARY:

Plaintiff's motion for default judgment against Defendant Framing & Gilding Studio, Inc. under the first cause of action for breach of lease is granted.

Plaintiff's motion for default judgment against Defendant Wendy Chang under the second cause of action for breach of guaranty is denied as premature.

Plaintiff's order to show cause for use and occupancy is denied as moot.

It is hereby

ORDERED that the Clerk enter judgment in favor of Plaintiff and against Defendant Framing Gilding Studio, Inc. in the amount of $86,085.00. It is further

ORDERED that this matter is scheduled for an inquest before the undersigned on **Monday, April 11, 2022 at 10:00 a.m.** to set the amount of unliquidated damages due under the Lease. It is further

ORDERED that Plaintiff serve a copy of this Decision and Order upon Defendants, with Notice of Entry, within thirty (30) days of the date hereof.

This constitutes the Decision and Order of this Court.

Dated: 2/23/2022

Hon. _____
FIDEL E. GOMEZ, A.J.S.C.