

NEW YORK SUPREME COURT - COUNTY OF BRONX
PART 32

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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**WALEED D. NASSER and MUSTAFA
ALSAIDI,**

Plaintiffs,

- against -

Index No. **816242/2021E**

Hon. **FIDEL E. GOMEZ**
Justice

V.V. 3RD AVE. REALTY, LLC,

Defendant.

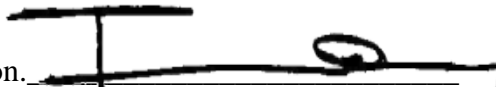
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The following papers numbered 1, read on this motion, noticed on 7/27/2022, and duly submitted as no. 2 on the Motion Calendar of 7/27/2022.

	<u>PAPERS NUMBERED</u>	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	1	
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
Notice of Cross-Motion - Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers-Order of Reference		
Memorandum of Law		

Plaintiffs' motion for default judgment is decided in accordance with the Decision and Order annexed hereto.

Dated: 10/3/2022

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

1. CHECK ONE..... CASE DISPOSED NON-FINAL DISPOSITION
2. MOTION IS..... GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER DO NOT POST
 FIDUCIARY APPOINTMENT REFEREE APPOINTMENT
 NEXT APPEARANCE DATE: _____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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**WALEED D. NASSER and MUSTAFA
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DECISION AND ORDER

- against -

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Defendant.

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Plaintiffs Waleed D. Nasser and Mustafa Alsaïdi (“Plaintiffs”) move for an order granting default judgment against Defendant V.V. 3rd Ave. Realty, LLC (“Defendant”) and setting this matter down for an inquest.¹ Defendant does not oppose.

For the reasons which follow, Plaintiffs’ motion is denied.

BACKGROUND:

On November 29, 2021, Plaintiffs commenced this action by filing a summons and verified complaint, alleging causes of action for a declaratory judgment, anticipatory breach of contract, and permanent injunction.

On January 11, 2022, Plaintiffs filed an amended verified complaint, alleging causes of action for a declaratory judgment, anticipatory breach of contract, fraud in the inducement, and permanent injunction.

On July 5, 2022, Plaintiffs filed the instant motion. On July 27, 2022, the motion was marked fully submitted.

¹ The notice of motion states that Plaintiffs move “for an order granting plaintiff leave to proceed to inquest as is set forth in the ‘WHEREFORE’ clause of the December 30, 2021 Summons and Amended Verified Complaint”. A review of the Plaintiffs’ supporting papers demonstrates that Plaintiffs seek a default judgment on its amended verified complaint, and the scheduling of an inquest on damages.

DISCUSSION:

Plaintiffs move for default judgment on its amended verified complaint. In support, Plaintiffs submitted, *inter alia*, the affidavit of service of the summons and verified complaint and the affidavit of service of the amended verified complaint.

CPLR 3025(a) provides that: “A party may amend his pleading once without leave of court within twenty days after its service, or at any time before the period for responding to it expires, or within twenty days after service of a pleading responding to it.”

The affidavit of service dated December 7, 2021, states that Defendant was served with the summons and verified complaint on December 7, 2021, by service upon the Secretary of State of the State of New York pursuant to Limited Liability Company Law § 303 (Plaintiffs’ Exhibit A).

LLC § 303(a) provides, in relevant part, that:

Service of process on the secretary of state as agent of a domestic limited liability company or authorized foreign limited liability company shall be made by personally delivering to and leaving with the secretary of state or his or her 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 limited liability company shall be complete when the secretary of state is so served* (emphasis added).

Service upon the Secretary of State as agent for a defendant limited liability company constitutes valid service (*Drillman v Marsam Realty 13th Ave., LLC*, 129 AD3d 903, 903 [2d Dept 2015]). Service of process is complete upon delivery of the summons and complaint to the Secretary of State (*Paez v 1610 Saint Nicholas Ave. L.P.*, 103 AD3d 553, 553-554 [1st Dept 2013]; *SP&S Associates, LLC v Insurance Co. of Greater New York*, 80 AD3d 529, 544 [1st Dept 2011]).

Here, Defendant was served with the summons and verified complaint on December 7, 2021, the date on which the Secretary of State was served with the summons and verified complaint (LLC § 303[a]). As such, it had until January 6, 2022, to serve an answer (CPLR 320[a]). It is undisputed that Defendant did not serve an answer.

Plaintiffs did not file or serve their amended verified complaint until January 11, 2022 (Plaintiffs’ Exhibit B), which is more than twenty days after service of the summons and verified complaint, and after the expiration of the period for responding to the summons and verified complaint. As such, Plaintiffs did not have the right to amend their verified complaint without

leave of court (CPLR 3025[a]). Since Plaintiffs did not proffer any evidence that they obtained a stipulation of the parties or sought leave of court in order to serve an amended verified complaint, Plaintiffs' service of the amended verified complaint is a nullity (*Lee Dodge, Inc. v Sovereign Bank, N.A.*, 172 AD3d 842, 843 [2d Dept 2019]; *Nikolic v Federation Employment and Guidance Service, Inc.*, 18 AD3d 522, 524 [2d Dept 2005]). Thus, Plaintiffs have not demonstrated that they properly filed and served an amended verified complaint, upon which they may seek default judgment.

Accordingly, Plaintiffs' motion for default judgment on its amended verified complaint is denied.

It is hereby

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

This constitutes the Decision and Order of this Court.

Dated: 10/3/22

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