

**33 Ninth Retail Owner LLC v Dean & Deluca Small
Format LQ, LLC**

2020 NY Slip Op 33408(U)

October 15, 2020

Supreme Court, New York County

Docket Number: 654956/2019

Judge: Laurence L. Love

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LAURENCE L. LOVE PART IAS MOTION 63M

Justice

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33 NINTH RETAIL OWNER LLC,
Plaintiff,

INDEX NO. 654956/2019

MOTION DATE 09/24/2020

MOTION SEQ. NO. 002

- v -

DEAN & DELUCA SMALL FORMAT LQ, LLC, DEAN & DELUCA, INC., SORAPOJ TECHAKRAISRI

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 33, 34, 35, 36, 37, 38

were read on this motion to/for RENEWAL

Upon the foregoing documents, the motion is decided as follows:

In an Order e-filed on March 10, 2020, this Court partially granted plaintiff's motion seeking a default judgment on the issue of liability, granting the motion as to the corporate defendants, but denying same as to the individual defendant, Sorapoj Techakraisri. Plaintiff now moves to renew said motion and to amend the caption to list defendant's name as Sorapoj Techakraisri a/k/a Kuhn Sorapoj Techakraisri.

A motion to renew must be based upon new facts that were not offered in the prior motion, and the party must set forth a reasonable justification for the failure to present such facts in the prior motion (see, CPLR § 2221[e]; Delvecchio v. Bayside Chrysler Plymouth Jeep Eagle Inc., 271 AD2d 636 [2d Dept 2000]; McNeill v. Sandiford, 270 AD2d 467 [2d Dept 2000]; Shapiro v. State, 259 AD2d 753 [2d Dept 1999]); or the motion must demonstrate that there has been a change in the law that would change the prior determination (see, CPLR § 2221[e]; Delvecchio v. Bayside Chrysler Plymouth Jeep Eagle Inc., supra). While plaintiff did provide some evidence

that Mr. Techakraisri is not in the military of the United States or New York State in its initial motion, plaintiff has now also provided an affidavit confirming same. As such, leave to renew is granted and upon renewal, the Court substitutes the following Order in place of its initial Order.

Plaintiff has submitted proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defendants' DEAN & DELUCA SMALL FORMAT LQ, LLC, DEAN & DELUCA, INC's and SORAPOJ TECHAKRAISRI's failure to answer or appear (see CPLR 3215(f); *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70-71 [2003]). "Given that in default proceedings the defendant has failed to appear and the plaintiff does not have the benefit of discovery, the affidavit or verified complaint need only allege enough facts to enable a court to determine that a viable cause of action exists" (id.).

Accordingly, it is ORDERED that default judgment is granted in favor of plaintiff and against defendants DEAN & DELUCA SMALL FORMAT LQ, LLC, DEAN & DELUCA, INC. and SORAPOJ TECHAKRAISRI, without opposition as to liability only; and it is further

ORDERED that an assessment of damages against due and owing to plaintiff by defendants DEAN & DELUCA SMALL FORMAT LQ, LLC, DEAN & DELUCA, INC. and SORAPOJ TECHAKRAISRI, is directed; it is further

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to determine: (1) damages sustained by the plaintiff as against defendants DEAN & DELUCA SMALL FORMAT LQ, LLC, DEAN & DELUCA, INC. and SORAPOJ TECHAKRAISRI, on plaintiffs first, second, third, fourth, and fifth causes of action; and it is further

ORDERED that the powers of the JHO/Special Referee to determine shall not be limited further than as set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119M,

646-386-3028 or spref@courts.state.ny.us) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this Court at www.nycourts.gov/supctmanh at the "Local Rules" link), shall assign this matter to an available Special Referee to determine as specified above; and it is further

ORDERED that plaintiff's counsel shall serve a copy of this order with notice of entry on the defendants and that counsel for plaintiff shall, after thirty days from service of those papers, submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (which can be accessed at <http://www.nycourts.gov/courts/ljd/supctmanh/refpart-infosheet-10-09.pdf>) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4318) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and that the parties shall appear for the reference hearing, including with all such witnesses and evidence as they may seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referee's Part in accordance with the Rules of that Part; and it is further ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue specified above shall proceed from day to day until completion; and it is further

ORDERED that the plaintiff's motion for leave to amend the complaint is granted; and it is further

ORDERED that the action shall bear the following caption:

33 NINTH RETAIL OWNER LLC,

Plaintiff(s),

-against-

DEAN & DELUCA SMALL FORMAT LQ, LLC, DEAN & DELUCA, INC., SORAPOJ TECHAKRAISRI a/k/a KHUN SORAPOJ TECHAKRAISRI

Defendant(s).


ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the parties being added pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website at the address (ww.nycourts.gov/supctmanh)].

This constitutes the Decision and Order of the Court.

10/15/2020

 DATE



 LAURENCE L. LOVE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE