

Verizon N.Y. Inc. v Union & Ct. Realty Corp.

2024 NY Slip Op 31300(U)

April 10, 2024

Supreme Court, New York County

Docket Number: Index No. 155575/2023

Judge: Emily Morales-Minerva

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. EMILY MORALES-MINERVA PART 42M

Justice

-----X

VERIZON NEW YORK INC.

Plaintiff,

- v -

UNION & COURT REALTY CORP.,

Defendant.

-----X

INDEX NO. 155575/2023

MOTION DATE 02/09/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14

were read on this motion to/for JUDGMENT - DEFAULT

HON. EMILY MORALES-MINERVA:

In this action to recover damages alleged to have been caused by negligence of the defendant, plaintiff VERIZON NEW YORK INC., ("plaintiff") moves for a default judgment against defendant UNION & COURT REALTY CORP., ("defendant"), based on defendant's failure to answer the complaint or otherwise appear in this matter. Plaintiff alleges it has sustained damages "in an amount not less than \$32,307.17, together with interest, costs, [and] attorney's fees." There is no opposition.

In support of its motion, plaintiff submits an affidavit by Ryan M. Jerome, plaintiff's counsel; an affidavit by Corbett Liverpool, an employee of the plaintiff with the title "Construction Local Manager"; a copy of the Complaint (Exhibit "A"); a copy of the affidavit of service for the Summons and

Complaint (Exhibit "B"); a copy the CPLR § 3215 Notice of Default with Affidavit of Mailing on October 27, 2023 (Exhibit "C"); a copy of the Property Damage Report (Exhibit "1"); and a copy of the explanations of charges (Exhibit "2").

Default Judgment Motion

In order to establish entitlement to a default judgment, plaintiff must prove (1) defendant was properly served, (2) defendant has failed to appear or respond, and (3) the facts constituting its claims are supported by an affidavit of a person with knowledge or a verified complaint (see CPLR § 3215(f)). CPLR § 3215 does not intend that default judgments are to be "rubberstamped" once jurisdiction and a failure to appear have been shown. (Feffer v. Malpeso, 210 A.D.2d 60, 61 [1st Dept 1994]). Rather, some proof of liability is required to satisfy the court as to the prima facie validity of the uncontested cause of action. Feffer, 210 A.D.2d at 61.

Here, plaintiff has met its burden by submitting an affidavit of service of the Summons and Complaint, proof of defendants' failure to answer or appear, and proof of the facts constituting the claim. The Attorney Affirmation annexed to plaintiffs' motion includes Corbett Liverpool's affidavit which provides direct personal knowledge of the facts constituting Plaintiff's claim. The Affidavit notes that Liverpool personally

reviewed the attached Report of Property Damage to Outside Plant ("PDR") which indicated, among other things, the nature of the damage and the identity of the damager. Further, the affidavit writes that "the incident and damages addressed in the PDR and described in the Complaint are one and the same." Therefore, Plaintiff's application is sufficient to support entry of a default judgment pursuant to CPLR § 3215[f].

Attorney's Fees

"[O]nly a prevailing party is entitled to attorney's fees" (Nestor v McDowell, 81 NY2d 410, 415-416 [1993]). "Under the general rule, attorney's fees are incidents of litigation and a prevailing party may not collect them from the loser unless an award is authorized by agreement between the parties, statute or court rule" (Hooper Assoc., Ltd. v AGS Computers, Inc., 74 NY2d 487, 491 [1989]). A party is entitled to a sum certain on a default judgment if it submits requisite proof of the facts constituting the claim, the default and the amount due, in the form of either an Affidavit of a Verified Complaint (see CPLR § 3215(f); see also, Chase Manhattan Bank (Nat. Ass'n) v. Evergreen Steel Corp., 91 A.D.2d 539, 539 [1st Dept 1982]).

Here, plaintiff requests that the Court grant their motion and directing that default judgment against defendant Union & Court Realty Corp. be entered pursuant to CPLR § 3215, "in an

amount not less than \$32,307.17, together with interest, costs, [and] attorney's fees." However, because plaintiff's damages claim of "an amount not less than \$32,307.17" is not amendable to the characterization of a "sum certain," nor are attorney's fees treated by courts as a "sum certain," plaintiff shall be directed to an Inquest to determine the issue of damages and attorney's fees (see Arent Fox Kintner Plotkin & Kahn, PLLC v Lurzer GmbH, 297 A.D.2d 590 [1st Dept 2002]).

Accordingly it is,

ORDERED that Plaintiff VERIZON NEW YORK INC.'s motion for a default judgment against Defendant UNION & COURT REALTY CORP., is granted without opposition; and it is further

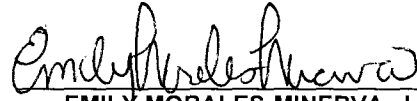
ORDERED that, with regard to the assessment of damages and attorney's fees, plaintiff and defendant shall appear for an inquest before Justice Emily Morales-Minerva in Part 42 at 111 Centre Street New York, NY 10013 in courtroom 574 on **June 12th, 2024 at 2:30pm**; and it is further

ORDERED that within 30 days of entry of this Order, plaintiff shall serve a copy of this order upon all parties, with notice of entry, and shall file such notice via NYSCEF.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

4/10/2024

DATE



EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE