

Northern Star LLC v CSG Off. Assistants, Inc.

2010 NY Slip Op 30578(U)

March 17, 2010

Supreme Court, New York County

Docket Number: 105514-2009

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
HON. JUDITH J. GISCHE

PRESENT: _____ J.S.C.
Justice

PART 10

NORTHERN STAR LLC

INDEX NO.

110457/09

MOTION DATE

MOTION SEQ. NO.

2

MOTION CAL. NO.

- v -
CSG OFFICE ASSISTANTS,
Inc., Et Al.

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

submitted on default (2/4/10)

Expedited **FILED**
MAR 19 2010
NEW YORK
COUNTY CLERK'S OFFICE

motion (s) and cross-motion(s)
decided in accordance with
the annexed decision/order
of even date.

Dated: 3/17/10

HON. JUDITH J. GISCHE J.S.C.
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 10**

-----x
NORTHERN STAR LLC,

Plaintiff (s),

-against-

CSG OFFICE ASSISTANTS, INC. D/B/A
CONCEPT SOLUTIONS GROUP and
CARAL LOPEZ and ANTHONY MARTINEZ,

Defendant (s).
-----x

DECISION/ ORDER

Index No.: 105514-2009

Seq. No.: 002

PRESENT:

Hon. Judith J. Gische

J.S.C.

Recitation, as required by CPLR § 2219 [a] of the papers considered in the review of this (these) motion(s):
-----x

Papers

Pltf n/m (3215) w/DMB affirm, exhs

Affirm of Mailing (sep back)

FILED
MAR 19 2010
NEW YORK
COUNTY CLERK'S OFFICE
Numbered 1
2

Upon the foregoing papers, the decision and order of the court is as follows:

GISCHE J.:

This is an action to recover unpaid rent and other amounts allegedly due under two commercial leases. Plaintiff Northern Star, LLC. ("Northern Star") now moves, pursuant to CPLR § 3215, for an order directing the Clerk of the Court to enter a default judgment in its favor and against defendants CSG Office Assistants Inc. (d/b/a Concept Solutions Group) ("CSG") and Caral Lopez ("Lopez"). Neither CSG or Lopez have submitted any opposition, despite due proof of service of the instant motion. Therefore, this motion is considered and decided on default against CSG and Lopez.

Plaintiff has provided proof that it served each defendant with the summons and verified compliant. This action was commenced by the filing of a summons and verified

complaint on July 23, 2009. Thereafter, the summons and verified complaint were served upon CSG by service on the Secretary of State on July 24, 2009 (BCL § 306).

Plaintiff served the summons and verified complaint upon defendant Lopez pursuant to CPLR § 308 (2), by serving a person of suitable age and discretion, the desk clerk, John Doe, of Lopez' residence on August 4, 2009, and thereafter by mailing an additional copy on the same day. Another service was made upon defendant Lopez by affixing process to the door of Lopez' residence on August 18, 2009 and, thereafter, by mailing an additional copy on the same day. "Nail and mail" service was resorted to only after three prior unsuccessful attempts at personal service were made on August 10, 2009, August 12, 2009 and August 13, 2009.

Additional copies of the summons and the verified complaint were mailed to CSG and Lopez on November 8, 2009 pursuant to CPLR § 3215 (g) (3) and (4). Therefore, the court has jurisdiction over CSG and Lopez.

At no time prior to this decision have defendants CSG or Lopez interposed an answer to the complaint, nor have the defendants requested that their time to answer be extended by the court. Plaintiff Northern Star has shown that the defendants have defaulted in this matter and that it is entitled to a judgment if it can otherwise establish a *prima facie* case. Gagen v. Kipany Productions Ltd., 289 AD2d 844 (3rd Dept 2001); Zelnik v. Bidermann Industries U.S.A., Inc., 242 AD2d 227 (1997). CSG's and Lopez' default in answering the complaint constitutes an admission of the relevant factual allegations therein and the reasonable inferences which may be made therefrom. Rokina Optical Co., Inc. v. Camera King, Inc., 63 NY2d 728 (1984).

The facts put forth by Northern Star in the verified complaint, the attached operative lease agreements, the business records of plaintiff, and through the sworn verification of

Howard Cheng, Northern Star 's Vice President, establish the following:

Northern Star is the owner and landlord of Units 300 and 301, located at 15-17 West 39th Street, New York, New York 10018 (collectively "Units"). Northern Star entered into two lease agreements ("Leases") for the Units with CSG, Lopez and co-defendant Anthony Martinez ("Martinez"), respectively dated June 24, 2003 and August 10, 2004. The Leases were originally set to expire on November 30, 2013. Beginning April 1, 2005, CSG and Lopez defaulted in their obligation to pay rent for the Units. On June 17, 2008, pursuant to Warrants of Eviction issued by the Civil Court of the City of New York, County of New York, Northern Star gained legal possession of the Units, thereby ending the landlord-tenant relationship. On July 23, 2009, plaintiff filed this complaint seeking to recover damages against CSG, Lopez and Martinez for breach of the Leases. Northern Star has submitted certain proof with respect to past due rent.

Discussion

The elements of a cause of action for breach of contract are: (1) formation of a contract between the parties; (2) performance by plaintiff; (3) defendant's failure to perform; and (4) resulting damage. Furia v. Furia, 116 AD2d 694 (2d Dept 1986). A lease is a form of contract.

Notwithstanding that Northern Star has proven the parties entered into binding leases and that it has shown that CSG and Lopez have defaulted in making certain payments under the Leases, no judgment can be entered at this time because Northern Star has not reliably established that the amount it seeks as damages is actually due to it under the Leases.

The records of account for both units contain thousands of dollars of charges that do not arise from the Leases and/or are not rent. They include, but are not limited to,

Amex usage fees, key card deposits, security deposits, bounced check fees, BIC assessments, Fire Department A/C ratings. Plaintiff includes charges for increases in security deposits but does not account for how it applied the existing security deposit to the outstanding monies once the Leases were terminated. Late fees are initially charged on zero balances. Thereafter, the late fees charged each month increase. While the late fees are a function of outstanding arrears, many of the items charged are not rental arrears, thus the late fees are incorrectly calculated and charged. This error compounds every month. There is no supporting documentation of the amount spent to clean the premises, let alone any description of the work actually done. These "errors" in the charges are so pervasive that the court cannot on this record simply reconcile them as a matter of mathematics.

Other than stating that it is entitled to the costs of the eviction proceeding and stating an amount, there is no proof submitted to support a claim for these "costs." If these costs are in actuality legal fees a different analysis applies. However, there is no proof of the legal fees plaintiff is seeking on this motion.

Accordingly, the motion is granted only to the extent that the court finds that CSG and Lopez have defaulted in answering and that they have breached the lease agreements with plaintiff. Plaintiff shall be entitled to proceed to an inquest to prove damages against such defendants. The inquest shall be held simultaneously with the trial on the underlying case against the only appearing defendant, Anthony Martinez, since many of the same issues raised at the trial and inquest will be identical.

Conclusion

In accordance herewith, it is hereby:

ORDERED that plaintiff's motion is granted to the extent that the court holds that


[* 6]
defendants CSG Office Assistants Inc. (d/b/a Concept Solutions Group) and Caral Lopez are in default answering the complaint; and it is further

ORDERED that the issue of the amount plaintiff Northern Star may recover from defendants CSG Office Assistants Inc. (d/b/a Concept Solutions Group) and Caral Lopez as and for damages for breach of the lease agreements shall be determined at the inquest, which shall be held at the same time as the trial of the underlying case; and it is further

ORDERED that any relief demanded but not expressly granted herein is denied and that this shall constitute the decision and order of the Court.

Dated: New York, New York
March 17, 2010

So Ordered:



HON. JUDITH J. GISCHE, J.S.C.

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