

Macrolase Corp. v Alliance Mktg. Solutions Corp.

2011 NY Slip Op 30315(U)

January 28, 2011

Sup Ct, Nassau County

Docket Number: 002445-10

Judge: Timothy S. Driscoll

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SUPREME COURT-STATE OF NEW YORK

Present:

HON. TIMOTHY S. DRISCOLL
Justice Supreme Court

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MACROLEASE CORPORATION,

TRIAL/IAS PART: 20
NASSAU COUNTY

Plaintiff,

Index No: 002445-10

-against-

ALLIANCE MARKETING SOLUTIONS CORP.,
MARK NAIDU and
MEADOWLANDS DEVELOPMENT, LLC,

Defendants.

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This matter is before the Court for decision on the motion filed by Plaintiff Macrolease Corporation (“Macrolease” or “Plaintiff”) on November 22, 2010 and submitted on December 8, 2010 (motion sequence number 1). For the reasons set forth below, the Court reserves decision on Plaintiff’s motion, and will permit Plaintiff to provide additional documentation in support, including but not limited to 1) copies of the demands and/or notices of default sent by Plaintiff to Defendants, 2) specific information regarding the amount of payments made by Defendant Alliance Marketing Solutions Corp. (“Alliance”) following Plaintiff’s declaration of default and acceleration of the lease, 3) an affidavit supporting Plaintiff’s allegation in the Complaint that the value of the leased equipment is \$30,000, and 4) an affidavit regarding the current location of the Leased Equipment allegedly in the possession of Alliance, whose office address is in the State of New Jersey according to the Lease Agreement that is the subject of Plaintiff’s motion. The motion will appear on the Court’s motion calendar on February 16, 2011.

BACKGROUND

A. Relief Sought

Plaintiff moves for an Order 1) granting Plaintiff a default judgment against Defendants Alliance, Mark Naidu (“Naidu”) and Meadowlands Development, LLC (“Meadowlands”) (collectively “Defendants”) on Plaintiff’s cause of action for replevin of certain leased equipment; 2) granting Plaintiff a default judgment against the Defendants on Plaintiff’s cause of action for breach of contract; and 3) directing an inquest to determine Plaintiff’s damages.

Defendants have not appeared in this action or submitted any response to Plaintiff’s motion.

B. The Parties’ History

The Verified Complaint (“Complaint”) (Ex. 1 to Komansky Aff.) alleges as follows:

Macrolease is a corporation created under the laws of the State of Rhode Island which is authorized to conduct business in the State of New York. Macrolease’s corporate headquarters and principal place of business are located at 1 West Ames Court, Suite 101, Plainview, County of Nassau, New York.

Alliance is a corporation created under the laws of the State of Delaware. Naidu is a natural person residing in the State of New Jersey. Meadowlands is a limited liability company created under the laws of the State of Delaware. The Defendants agreed, in the applicable lease and guaranty agreements, that any disputes arising under those agreements may be adjudicated in a state court in the state where Plaintiff has its principal place of business. In addition, Defendants consented to the personal jurisdiction of that court.

First Cause of Action

On or about January 9, 2009, Tiger Leasing, LLC (“Tiger Leasing”) made a written Master Lease and Lease Schedule (collectively “Lease Agreement”) (Ex. 1 to Compl.) with Alliance for the lease of certain equipment (“Leased Equipment”) more particularly described in the Lease Agreement and its accompanying schedules.

On or about January 9, 2009, to induce Tiger Leasing to make the Lease Agreement, Naidu and Meadowlands executed a guaranty (“Guaranty”) (Ex. 2 to Compl.) in which they guaranteed to Tiger Leasing, and its successors and assigns, Alliance’s payment and performance of the Lease Agreement. On January 9, 2009, Tiger Leasing assigned the Lease,

Guaranty and other documents relating thereto, to Macrolease. As the holder of the Lease and Guaranty, Macrolease has the right to enforce the obligations imposed on the Defendants by the Lease and Guaranty.

Alliance breached the Lease by failing to pay monthly rental payments when due. Specifically, Alliance failed to pay the monthly rent payments due on October 15, November 15 and December 15, 2009. On or about January 5, 2010, Plaintiff accelerated the balance of rents due under the Lease and made demand on Alliance for the immediate payment of the past due rents and accelerated rents. Alliance has not complied with Plaintiff's demand.

As a result of Alliance's breach, Plaintiff has incurred the following damages:

1) \$216,568.84 in past due rent and accelerated rent, 2) late charges on the past due rent of \$1,709.76, 3) interest of one and one-half (1.5%) percent per month on the past due rent payments from their respective due dates, and 4) interest of one and one-half (1.5%) percent per month on the accelerated rent from January 5, 2010.

Second Cause of Action

Alliance in possession of the Leased Equipment, which is set forth on a list attached as Exhibit 3 to the Complaint. Plaintiff is the owner of the Leased Equipment, the value of which, upon information and belief, is \$30,000. Plaintiff has the right to immediate possession of the Leased Equipment, and has demanded its return from Alliance, who has not complied with that demand.

Third Cause of Action

Pursuant to the terms of the Lease, Alliance agreed to pay all costs, expenses and attorney's fees incurred by Plaintiff in any dispute related to the Lease or the Leased Equipment. Plaintiff seeks judgment against Alliance for the costs, expenses and fees it has incurred in enforcing the Lease and obtaining repossession of the Leased Equipment, plus applicable interest.

Fourth Cause of Action

Plaintiff seeks judgment against Naidu and Meadowlands pursuant to the Guaranty. Plaintiff has made demand upon Defendants Naidu and Meadowlands for the required payments, and they have failed to perform their obligations under the Guaranty. As a result of the failure of Naidu and Meadowlands to comply with the Guaranty, Plaintiff has incurred the following

damages: 1) \$216,568.84 in past due rent and accelerated rent, 2) late charges on the past due rent of \$1,709.76, 3) interest of one and one-half (1.5%) percent per month on the past due rent payments from their respective due dates, 4) interest of one and one-half (1.5%) percent per month on the accelerated rent from January 5, 2010, and 5) costs, expenses and attorney's fees incurred by Plaintiff in pursuing this action, with interest.

Fifth Cause of Action

In the Guaranty, Naidu and Meadowlands agreed to pay attorney's fees and legal costs incurred by Plaintiff in enforcing the Lease and Guaranty. Plaintiff has incurred, and continues to incur, such costs and fees and seeks judgment against Naidu and Meadowlands for those sums.

In his Affidavit in Support, Daniel W. West ("West") affirms as follows:

West is the president of Macrolease and has personal knowledge of the relevant facts. Macrolease is the holder of the Lease between Tiger Leasing and Alliance, as well as the Guaranty executed by Naidu and Meadowlands, as a result of the assignment ("Assignment") of those instruments by Tiger Leasing to Macrolease. West provides a copy of the Assignment (Ex. 4 to West Aff.).¹

The Lease and Guaranty are now in default as a result of the Defendants' failure to make the required payments. Macrolease accelerated the balance due after the default occurred, and demanded return of the Leased Equipment, but the Defendants remain in default and have not returned the Leased Equipment. Alliance did make "an occasional payment" (West Aff. at ¶ 4) after Macrolease declared the default and accelerated the Lease, but those payments are insufficient to cure the default.

In his Affirmation in Support, counsel for Plaintiff affirms as follows:

Plaintiff served the Defendants with the Summons and Complaint as reflected by the Affidavits of Service provided (Ex. 2 to Komansky Aff.). In addition, Plaintiff served Notices of Default, pursuant to CPLR § 3215(g), on Defendants as reflected by the Proof of Service

¹ The Assignment is accompanied by a letter dated January 27, 2010, from Tiger Leasing to Macrolease, noting that the Assignment contains a typographical error regarding the date of assignment. The Assignment reflects that the date of assignment was January 9, 2008, but it was in fact January 9, 2009. The Court notes that the Assignment contains the correct date at the bottom of the page, underneath the signature of the President of Tiger Leasing.

provided (Ex. 3 to Komansky Aff.). No Defendant has appeared in this action, served an answer or moved with respect to the Complaint, and the time to do so has expired.

Plaintiff seeks a default judgment against Defendants 1) adjudging that Macrolease is entitled to immediate possession of the Lease Equipment and directing that the chattels be delivered to Macrolease; 2) ordering that, in the event that Plaintiff does not receive the Leased Equipment by the date of the inquest on damages, Macrolease shall be entitled to additional damages against Defendants in the amount of the value of the Equipment, which shall be determined at the inquest; and 3) ordering the entry of a default judgment in favor of Macrolease and against the Defendants and directing an inquest for the determination of damages, attorney's fees and expenses.

C. The Parties' Positions

Plaintiff submits that it has demonstrated its right to the requested relief by establishing that Defendants breached the Lease and Guaranty, of which Plaintiff is now the holder as a result of the Assignment, and that Alliance remains in possession of the Leased Equipment despite Plaintiff's demand for its return.

Defendants have not appeared in this action, or submitted any response to Plaintiff's motion.

RULING OF THE COURT

CPLR § 3215(a) permits a party to seek a default judgment against a Defendant who fails to make an appearance. The moving party must present proof of service of the summons and the complaint, affidavits setting forth the facts constituting the claim, the default, and the amount due. CPLR § 3215 (f); *Allstate Ins. Co. v. Austin*, 48 A.D.3d 720 (2d Dept. 2008). The moving party must also make a *prima facie* showing of a cause of action against the defaulting party. *Joosten v. Gale*, 129 A.D.2d 531 (1st Dept. 1987).

Although a defaulting defendant is deemed to have admitted all the allegations in the complaint, the legal conclusions to be drawn from such proof are reserved for the Supreme Court's determination. *McGee v. Dunn*, 75 A.D.3d 624, 624 (2d Dept. 2010), quoting *Venturella-Ferretti v. Ferretti*, 74 A.D.3d 792 (2d Dept. 1992) and citing, *inter alia*, CPLR § 3215(b). There is no mandatory ministerial duty to enter a default judgment against a defaulting party. *Id.*, citing *Resnick v. Lebovitz*, 28 A.D.3d 533, 534 (2d Dept. 2006), quoting

Gagen v. Kipany Prods., 289 A.D.2d 844, 846 (2d Dept. 2006) (internal citations omitted).

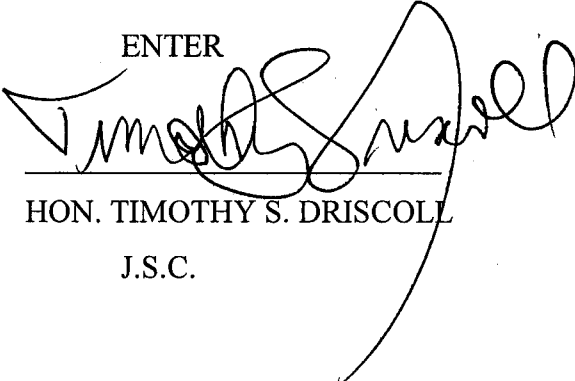
Instead, the court must determine whether the motion was supported with enough facts to enable the court to determine that a viable cause of action exists. *Id.*, quoting *Woodson v. Mendon Leasing Corp.*, 100 N.Y.2d 62, 71 (2003). In determining whether the plaintiff has a viable cause of action, the court may consider the complaint, affidavits, and affirmations submitted by the plaintiff. *Id.* at 625, quoting *Litvinskiy v. May Entertainment Group, Inc.*, 44 A.D.3d 627, 627 (2d Dept. 2007).

Plaintiff has provided proof of the Lease Agreement and Guaranty, demonstrated that it is the holder of those instruments as a result of the Assignment from Tiger Leasing and established that Defendants have failed to make all the required payments. The Court, however, determines that it would be appropriate to have additional information prior to rendering a final decision on the motion. The Court notes that Plaintiff has conceded that Alliance made certain payments after Macrolease declared the default and accelerated the Lease, but asserts that those payments are insufficient to cure the default. Plaintiff, however, has not provided the Court with the amount of those payments. In addition, although the Court surmises that the Leased Equipment is located at Alliance's address in New Jersey as stated in the Lease Agreement, Plaintiff's motion contains no affirmation regarding the location of the Leased Equipment which would be relevant to Plaintiff's request for judgment on its cause of action "for replevin of certain leased equipment" (P's Notice of Motion). Plaintiff also has not provided any support for its claim as to the value of the Leased Equipment, which may be relevant should the Court require the posting of a bond.

Accordingly, the Court reserves decision on Plaintiff's motion, and will permit Plaintiff to provide additional documentation in support, including but not limited to 1) copies of the demands and/or notices of default sent by Plaintiff to Defendants, 2) specific information regarding the amount of payments made by Defendant Alliance following Plaintiff's declaration of default and acceleration of the lease, 3) an affidavit supporting Plaintiff's allegation in the Complaint that the value of the leased equipment is \$30,000, and 4) an affidavit regarding the current location of the Leased Equipment allegedly in the possession of Alliance, whose office

address is in the State of New Jersey according to the Lease Agreement that is the subject of Plaintiff's motion. The motion will appear on the Court's motion calendar on February 16, 2011.

DATED: Mineola, NY
January 28, 2011

ENTER

HON. TIMOTHY S. DRISCOLL
J.S.C.

ENTERED
FEB 01 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE