

Grobman v Etoile 660 Madison LLC
2013 NY Slip Op 31642(U)
July 18, 2013
Supreme Court, New York County
Docket Number: 15030/13
Judge: Manuel J. Mendez
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. MANUEL J. MENDEZ
Justice

PART 13

ROSE GROBMAN,

Plaintiff(s),

- v -

INDEX NO. 150301/13

MOTION DATE 7-17-2013

MOTION SEQ. NO. 001

MOTION CAL. NO.

ETOILE 660 MADISON LLC, ETOILE 660 MADISON MEZZ LLC,
ETOILE 660 MADISON MEZZ 2 LLC, ETOILE 660 MADISON MEZZ 3 LLC,
JSRE MANAGEMENT, LLC, FISHER BROTHERS MANAGEMENT CO. LLC,
and FIRST QUALITY MAINTENANCE II, LLC, d/b/a FIRST QUALITY
MAINTENANCE,

Defendant(s).

The following papers, numbered 1 to 7 were read on this motion and cross-motion to/ for
Default:

Table with 2 columns: Description of papers and PAPERS NUMBERED. Rows include Notice of Motion/ Order to Show Cause, Answering Affidavits, and Replying Affidavits.

Cross-Motion: Yes X No

Upon a reading of the foregoing cited papers, it is ordered that the Plaintiff's
Motion pursuant to CPLR Section 3215 for a Default Judgment against Defendants,
Etoile 660 Madison Mezz LLC, Etoile 660 Madison Mezz 2 LLC, Etoile 660 Madison
Mezz 3 LLC, and First Quality Maintenance II, LLC, d/b/a First Quality Maintenance
(collectively, the "Defaulting Defendants"), is granted on default.

Plaintiff brought this action, for personal injuries she claims were sustained
after a trip and fall on a floor mat in a building lobby. She seeks an Order granting
a Default Judgment against the Defaulting Defendants, setting this matter down for
inquest on damages at the time of trial of the remainder of this action.

Defendants Etoile 660 Madison LLC and Fisher Brothers Management
oppose that branch of Plaintiff's Motion which sought originally Default Judgment
against them.

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

In Plaintiff's Supplemental Affirmation, Plaintiff withdrew that portion of her Motion which sought a Default Judgment against Defendant Etoile 660 Madison LLC.

At Oral Arguments, held before this Court on July 17, 2013, Plaintiff clarified that she sought a Default Judgment against the Defaulting Defendants, not against any of the other Defendants.

None of the Defaulting Defendants have appeared in this action and none oppose Plaintiff's Motion.

The party seeking to obtain a default judgment is required to provide proof of service of the summons and complaint, as well as an affidavit stating the facts constituting the claim and the default. *See CPLR Section 3215(f)*.

Service of summons and complaint upon the Secretary of State constitutes valid service on authorized foreign limited liability companies. *See N.Y. Ltd. Liab. Co. Law Section 303*.

Plaintiff submits a printout of the New York Secretary of State website showing that Defendant First Quality Maintenance II, LLC, d/b/a First Quality Maintenance is a foreign limited liability company authorized to do business in the State of New York.

Service of summons and complaint upon both the Secretary of State and sent by registered mail, return receipt requested, to the address specified for the mailing of process constitutes valid service on unauthorized foreign limited liability companies. *See N.Y. Ltd. Liab. Co. Law Section 304*.

Plaintiff submits printouts of the New York Secretary of State website showing that Defendants Etoile 660 Madison Mezz LLC, Etoile 660 Madison Mezz 2 LLC, and Etoile 660 Madison Mezz 3 LLC are foreign limited liability companies not authorized to do business in the State of New York.

Within one year after the defendant's default, plaintiff may obtain a default judgment. *See KPG Inc. v. Salinas Group Limited*, 11 A.D. 3d 338, 783 N.Y.S. 2d 543 (N.Y.A.D. 1st Dept. 2004); and *Garcia v. City of New York*, 71 A.D. 3d 503, 895 N.Y.S. 2d 817 (N.Y.A.D. 1st Dept. 2010).

Plaintiff submits the Affidavit(s) of Steve Avery, a license process server as proof on January 18, 2013, the Summons and Verified Complaint was served on Etoile 660 Madison Mezz LLC, Etoile 660 Madison Mezz 2 LLC, and Etoile 660 Madison Mezz 3 LLC by service upon the Secretary of State. (Mot. Ex. E, G, I).

The Affirmation In Support of Erin K. Hurley states that pursuant to Limited Liability Company Law Section 304 (c)(2) notice was sent January 24, 2013, by registered mail, return receipt requested, to the registered agent(s) for service for Etoile 660 Madison Mezz LLC, Etoile 660 Madison Mezz 2 LLC, and Etoile 660 Madison Mezz 3 LLC. The Affirmation states the return receipts of the mailings were received February 11, 2013, February 1, 2013, and February 5, 2013 respectively.

Plaintiff submits the Affidavit(s) of Steve Avery, a license process server as proof on March 15, 2013, the Supplemental Summons and Amended Verified Complaint was served on Etoile 660 Madison Mezz LLC, Etoile 660 Madison Mezz 2 LLC, and Etoile 660 Madison Mezz 3 LLC by service upon the Secretary of State. (Mot. Ex. M, N, O).

Plaintiff submits the affidavit of Steve Avery, a license process server as proof on March 18, 2013, the Supplemental Summons and Amended Verified Complaint was served on First Quality Maintenance II, LLC d/b/a First Quality by service upon the Secretary of State. (Mot. Ex. Q)

The Affirmation In Support of Erin K. Hurley states that pursuant to Limited Liability Company Law Section 304 (c)(2) notice was sent March 19, 2013, by registered mail, return receipt requested, to the registered agent(s) for service for Etoile 660 Madison Mezz LLC, Etoile 660 Madison Mezz 2 LLC, and Etoile 660 Madison Mezz 3 LLC. The Affirmation states the return receipts of the mailings were received April 8, 2013, March 28, 2013, and March 28, 2013 respectively.

Plaintiff's Affidavit states that she was injured as a result of a trip and fall on February 9, 2010 on a floor mat in the the building located at 660 Madison Avenue, New York, N.Y.

Plaintiff states that she was informed that Defendants Etoile 660 Madison LLC, Etoile 660 Madison Mezz LLC, Etoile 660 Madison Mezz 2 LLC, Etoile 660 Madison Mezz 3 LLC are the owners of the property, Defendant Fisher Brothers Management is the managing agent of the building, and that Defendant First Quality Maintenance II, LLC d/b/a First Quality was the maintenance company responsible for the mat on the floor of the building lobby on the date of the accident.

The Defending Defendants' time to answer the Supplemental Summons and Amended Verified Complaint has expired.

Upon a review of all the papers submitted, this Court finds that Plaintiff has established a basis to obtain a Default Judgment against the Defaulting Defendants.

Accordingly, it is ORDERED that Plaintiff's Motion pursuant to CPLR Section 3125 for a Default Judgment against Defendants Etoile 660 Madison LLC and

Fisher Brothers Management Co. LLC is withdrawn, and it is further,

ORDERED that Plaintiff's Motion pursuant to CPLR Section 3211 seeking to strike the Affirmative Defense asserted by Defendant Etoile 660 Madison LLC is withdrawn, and it is further,

ORDERED that the Plaintiff's Motion pursuant to CPLR Section 3215 for a Default Judgment against Defendants Etoile 660 Madison Mezz LLC, Etoile 660 Madison Mezz 2 LLC, Etoile 660 Madison Mezz 3 LLC, and First Quality Maintenance II, LLC, d/b/a First Quality Maintenance is granted on default, and it is further,

ORDERED that judgment on liability is granted against Defendants Etoile 660 Madison Mezz LLC, Etoile 660 Madison Mezz 2 LLC, Etoile 660 Madison Mezz 3 LLC, and First Quality Maintenance II, LLC, d/b/a First Quality Maintenance, and it is further,

ORDERED that, an inquest as to damages against Defendants Etoile 660 Madison Mezz LLC, Etoile 660 Madison Mezz 2 LLC, Etoile 660 Madison Mezz 3 LLC, and First Quality Maintenance II, LLC, d/b/a First Quality Maintenance shall take place at the time of trial of this action.

ENTER :

Dated: July 18, 2013



MANUEL J. MENDEZ
J.S.C. **MANUEL J. MENDEZ**
J.S.C.

Check one: FINAL DISPOSITION X

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE