

Eshel v Bruin Funding LLC

2016 NY Slip Op 32663(U)

November 7, 2016

Supreme Court, New York County

Docket Number: 653744/2016

Judge: Shirley Werner Kornreich

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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: JUSTICE SHIRLEY WEBSTER KORNREICH

PART 54

Justice

Index Number : 653744/2016
ESHEL, ARIK
vs.
BRUIN FUNDING LLC
SEQUENCE NUMBER : 001
DEFAULT JUDGMENT

INDEX NO. _____
MOTION DATE 9/29/16
MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 6-23

Answering Affidavits — Exhibits _____ | No(s). _____

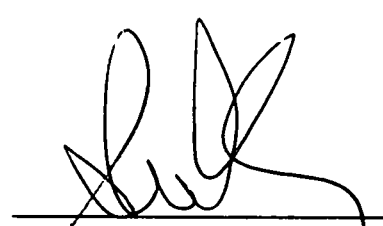
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

MOTION IS GRANTED
WITH COSTS TO BE PAID BY
DECISION AND ORDER

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

Dated: 11/7/16

 J.S.C.

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITIONS
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

-----X
ARIK ESHEL,

Index No.: 653744/2016

Plaintiff,
-against-

DECISION & ORDER

BRUIN FUNDING LLC, DONALD W. BARRICK, and
RMP CAPITAL CORP.,

Defendants.

-----X
SHIRLEY WERNER KORNREICH, J.:

Plaintiff Arik Eshel moves, pursuant to CPLR 3215, for a default judgment against defendants Bruin Funding LLC (Bruin), Donald W. Barrick, and RMP Capital Corp (RMP). Plaintiff’s motion is granted, on default, for the reasons that follow.

Eshel commenced this action to collect the balance due on an April 6, 2015 promissory note executed by Bruin with a principal amount of \$500,000. *See* Dkt. 16 at 1 (the Note).¹ The Note, which matured on January 6, 2016, carries 24% per-annum interest. The Note was personally and unconditionally guaranteed by Barrick and RMP. *See id.* at 43 (Barrick’s Guarantee), 53 (RMP’s Guarantee) (collectively, the Guarantees). The Note and Guarantees are governed by New York law. To date, defendants have made payments on the Note totaling \$121,482.37. On July 18, 2016, Eshel commenced this action by filing a complaint seeking the balance of the principal and interest due on the Note. Eshel also seeks attorneys’ fees, which is provided for by the Note and the Guarantees. Defendants were duly served, but never answered the complaint or moved to dismiss. Eshel filed the instant motion for a default judgment on

¹ References to “Dkt.” followed by a number refer to documents filed in this action in the New York State Courts Electronic Filing (NYSCEF) system.

September 7, 2016. He seeks the balance owed on the Note as of the date of the complaint, \$531,420,86, plus all subsequently accrued interest and attorneys' fees.

“When a defendant has failed to appear . . . the plaintiff may seek a default judgment against him.” CPLR 3215(a). To succeed on a motion for a default judgment, the plaintiff must submit proof of service of process and affidavits attesting to the default and the facts constituting the claim. *See* Siegel, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR C3215:16, at 557. “Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action. The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts.” *Feffer v Malpeso*, 210 AD2d 60, 61 (1st Dept 1994) (citations omitted); *see Whitemore v Yeo*, 117 AD3d 544, 545 (1st Dept 2014). “[A] defaulting defendant is deemed to have admitted all the allegations in the complaint.” *McGee v Dunn*, 75 AD3d 624 (2d Dept 2010). Eshel has complied with these requirements by submitting proof of defendants’ liability under the Note and the Guarantees and, therefore, is entitled to a default judgment. Accordingly, it is

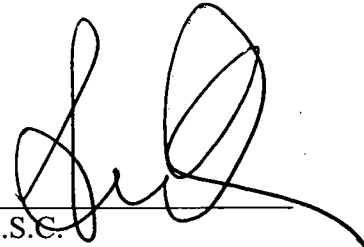
ORDERED that the motion by plaintiff Arik Eshel for a default judgment against defendants Bruin Funding LLC, Donald W. Barrick, and RMP Capital Corp is granted, jointly and severally, in the amount of \$531,420,86, plus 24% per-annum interest from July 18, 2016 to the date judgment is entered, and the entry of such judgment will be directed after the calculation of the reasonable attorneys’ fees expended by Eshel in this action, which is referred to a Special Referee to hear and determine; and it is further

ORDERED that, unless plaintiff waives its claim for attorneys’ fees (by submitting an affidavit from plaintiff to that effect and contacting chambers regarding the entry of judgment),

within 7 days of the entry of this order on the NYSCEF system, plaintiff shall file a Note of Issue, pay the appropriate fees, and serve a copy of this order with notice of entry, as well as a completed information sheet, on the Special Referee Clerk at spref-nyef@nycourts.gov, who is directed to place this matter on the calendar of the Special Referee's part for the earliest convenient date and notify all parties of the hearing date; and it is further

ORDERED that within 3 days of the entry of this order on the NYSCEF system, plaintiffs shall serve a copy of this order on defendants along with notice of entry by overnight mail.

Dated: November 7, 2016

ENTER: 

J.S.C.

SHIRLEY WERNER KORNREICH
J.S.C