

274 Madison Co. LLC v Tru Legacy Partners, LLC

2017 NY Slip Op 31284(U)

June 14, 2017

Supreme Court, New York County

Docket Number: 156875/2016

Judge: Robert D. Kalish

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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: Hon. ROBERT D. KALISH
Justice

PART 29

274 MADISON COMPANY LLC,

INDEX NO. 156875/2016

Plaintiff,

MOTION DATE 5/02/17

MOTION SEQ. NO. 001

- v -

TRU LEGACY PARTNERS, LLC and SHAWN
RODGERS,

Defendants.

The following papers, numbered 24-44, were read on this motion to enter a default judgment.

Notice of Motion—Affirmation—Diaz Affidavit—Meenaghan Affidavit—
Exhibits A-O— Memorandum of Law—Affidavit of Service

No(s). 24-44

Stipulation Withdrawing Motion for Default Judgment as Against Defendant
Shawn Rogers Only

No(s). 51

Motion by Plaintiff 274 Madison Company LLC for a default judgment, pursuant
to CPLR 3215, is granted as to Defendant Tru Legacy Partners (“Tru”), LLC only,
and the branch of the motion for entry of a default judgment as against Defendant
Shawn Rogers is withdrawn per stipulation:

BACKGROUND

Plaintiff alleges—through the sworn affidavit of an employee of its
management company Abramson Brothers Company—that Plaintiff (as landlord)
and Defendant Tru (as tenant) entered into a commercial space lease commencing
on March 1, 2015 and expiring on February 28, 2018, whereby Defendant Tru
agreed to pay an annual base rent of \$89,831 in equal monthly installments of
\$7,485.92. (Diaz Aff. ¶¶ 5-6; see also Ex. C [Lease].) The demised premises were
Room 1900 at 274 Madison Avenue. (Diaz Aff. ¶¶ 1, 5.)

Plaintiff argues that it is entitled to a default judgment as to Defendant Tru
for \$41,033 in rent arrears pursuant to a lease between the parties for the time that
Defendant Tru was occupying the premises but not paying rent. (Notte Affirm. ¶

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

14.) Plaintiff also argues that it is entitled to a default judgment against the Defendant Tru in the amount of \$51,230 for additional rent through January 2017 for the period that Defendant Tru no longer occupied the premises but failed to turn over possession pursuant to the lease. (*Id.*)

Plaintiff alleges that Defendant Tru failed to pay its rent starting in May 2016, and Plaintiff commenced a non-payment proceeding against Defendant Tru in Civil Court. (Diaz Aff. ¶¶ 14-17.) Plaintiff alleges that Defendant Tru did not appear in that Civil Court proceeding and was evicted by Civil Court order dated August 16, 2016. (Notte Affirm. ¶ 4; Diaz Aff. ¶ 14.) Plaintiff states that on the date of eviction, Defendant owed \$41,033.16 in pre-vacatur base and additional rent. (*Id.* ¶ 14.) Plaintiff further alleges that, upon eviction, Defendant Tru failed to leave the premises in “broom clean condition” and failed to return the keys to Plaintiff’s managing agent. (Diaz Aff. ¶ 15.) Plaintiff further states that the subject premises have not been re-let as of the date of the instant motion. (*Id.* ¶ 16.)

Plaintiff further alleges that Defendant Shawn Rogers “executed a limited personal guaranty whereby” he assumed “personal liability for [Defendant Tru]’s payments and performance[.]” (Diaz Aff. ¶ 12.)

Plaintiff originally moved for entry of default judgments as against both Defendant Tru and Defendant Rogers. Subsequently, Defendant Rogers served an answer on April 26, 2017 (NYSCEF Document No. 50), and pursuant to a stipulation of April 26, 2017 (NYSCEF Document No. 51) the motion for a default judgment has been withdrawn as against Defendant Rogers. As such, the instant motion seeks entry of a default judgment against only Defendant Tru. (Stipulation of Withdrawal of April 26, 2017.)

Plaintiff alleges that it served Defendant Tru via the New York Secretary of State on August 26, 2016, pursuant to NY LLC Law § 303. (Notte Affirm. ¶ 7; Ex. J [Aff. of Service for Complaint].) Plaintiff further alleges that it served Defendant Tru with notice and an additional copy of the summons and complaint, pursuant to CPLR 3215 (g) on September 22, 2016. (Notte Affirm. ¶ 8; Ex. K [Aff. of Service for CPLR 3215 Notice].) Plaintiff further alleges that it served Defendant Tru with copies of the instant motion papers via regular mail pursuant to CPLR 2103.

DISCUSSION

CPLR 3215 (a) provides, in pertinent part, that “[w]hen a defendant has failed to appear, plead or proceed to trial . . . , the plaintiff may seek a default judgment against him.” On a motion for a default Judgment under CPLR 3215 based upon a failure to answer the complaint, the plaintiff demonstrates its entitlement to a default judgment against the defendant by submitting: (1) proof of service of the summons and complaint, (2) proof of the facts constituting its claim, and (3) proof of the defendant's default in answering or appearing. (See CPLR 3215 [f]; *Matone v Sycamore Realty Corp.*, 50 AD3d 978 [2d Dept 2008]; *Allstate Ins. Co. v Austin*, 48 AD3d 720 [2d Dept 2008]; see also *Liberty County Mut. v Avenue I Med., P.C.*, 129 AD3d 783 [2d Dept 2015].)

On the instant motion, Plaintiff presents proof of adequate service of: (1) the summons and complaint on Defendant Tru pursuant to NY LLC Law § 303; (2) notice and an additional copy of the summons and complaint pursuant to CPLR 3215 (g); and (3) the instant motion pursuant to CPLR 2103. Plaintiff further presents a prima facie case of breach of the terms of the lease by Defendant Tru sufficient to entitle Plaintiff to entry of a default judgment as against Defendant Tru. As of the date of this decision, Defendant Tru has not appeared.

CONCLUSION

Accordingly, it is hereby ORDERED that Plaintiff 274 Madison Company LLC's motion for entry of a default judgment, pursuant to CPLR 3215, is granted as against Defendant Tru Legacy Partners, LLC only, without opposition submitted; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Plaintiff 274 Madison Company LLC on the issue of liability only as against Defendant Tru Legacy Partners, LLC only; and it is further

ORDERED that counsel for all parties shall appear before this Court for a preliminary conference on Tuesday, September 19, 2017 at 9:30 a.m.; and it is further

ORDERED that an assessment of damages as against Defendant Tru Legacy Partners, LLC is held in abeyance and shall occur at the time of trial or other dispositive determination.

This constitutes the Decision and Order of the Court.

Dated: June 14, 2017
New York, New York

Robert D. Kalish, J.S.C.
HON. ROBERT D. KALISH

- 1. Check one:.....
- 2. Check if appropriate:..... MOTION IS:
- 3. Check if appropriate:.....

- CASE DISPOSED NON-FINAL DISPOSITION
- GRANTED DENIED GRANTED IN PART OTHER
- SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE