

**135 E. 57th St., LLC v Infotech Solutions For Bus.,
Inc.**

2017 NY Slip Op 31471(U)

July 11, 2017

Supreme Court, New York County

Docket Number: 152968/2016

Judge: Kathryn E. Freed

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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. KATHRYN E. FREED, J.S.C.
Justice

PART 2

-----X

135 EAST 57TH STREET, LLC

Plaintiff,

INDEX NO. 152968/2016

MOTION DATE 3/31/2017

- v -

MOTION SEQ. NO. 001

INFOTECH SOLUTIONS FOR BUSINESS, INC.,

Defendant.

DECISION AND ORDER

-----X

The following e-filed documents, listed by NYSCEF document number 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 were read on this application to/for Judgment - Default

Upon the foregoing documents, it is Granted without opposition.

Plaintiff 135 East 57th Street, moves, pursuant to CPLR 3215, for a default judgment against defendant, Infotech Solutions For Business, Inc., based on the breach of a lease entered into between the parties on October 21, 2010. Specifically, plaintiff claims that defendant failed to pay both base rents and other additional charges as rent, pursuant to said lease from the period beginning April 1, 2015 until the end of the lease term on June 30, 2016. Plaintiff now moves, pursuant to CPLR 3215(g), for an Order directing entry of judgment in the amount of \$807,688.55 plus interest from June 30, 2016 and additionally directing the severing of plaintiff's claim for attorney's fees and disbursements of this proceeding.

This action was commenced via the filing of a summons and complaint on or about April 7, 2016. Copies of the summons and complaint and the affidavit of service thereof are annexed as Exhibits 1 and 2.

Pursuant to CPLR 3215(g), plaintiff served an additional mailing of the summons and complaint on defendant on April 22, 2016. See Exhibit 3.

Plaintiff's attorney, Donald A. Harwood, a principal of Harwood Reiff, LLC., in his Affirmation of Default and Additional Notices, avers that defendant has failed to appear and plead in the captioned action, that the time to interpose an answer has not been extended, and that defendant is therefore in default. Harwood further avers that, despite due demand having been made, all of the rent charges and additional rent charges remain outstanding.

The Court also notes that an Affidavit in Support is submitted by Steven M. Cherniak, Chief Operating Officer for plaintiff, who attests to having personal knowledge of this matter, and who additionally personally reviewed the documents and computer generated ledgers and attests to their accuracy. He avers that, based upon the lease signed by defendant and upon the annexed documents, during the period from April 1, 2015 until the end of the lease term of June 30, 2016, plaintiff is owed a total of \$807,688.55, plus interest from June 30, 2016.

Conclusions of Law:

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.” It is well settled that “[o]n a motion for leave to enter a default judgment pursuant to CPLR 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts

constituting the claim, and proof of the defaulting party's default in answering or appearing." *Atlantic Cas. Ins. Co. v RJNJ Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011). Moreover, a default in answering the complaint is deemed to be an admission of all factual statements contained in the complaint and all reasonable inferences that flow from them. *See Woodson v Mendon Leasing Corp.*, 100 NY2d 63 (2003).

In the case at bar, plaintiff has submitted its summons and amended complaint, along with the affidavit of service relating thereto, proof that defendant has defaulted, and an affidavit of facts constituting the claim establishing, inter alia, that the total sum owed to it by defendant is, \$807,688.55, plus interest from June 30, 2016.

Therefore, in accordance with the foregoing, it is hereby:

ORDERED that the branch of the motion by plaintiff 135 East 57th Street, LLC., for a default judgment against defendant Infotech Solutions For Business, Inc. is granted in the amount of \$807,688.55, plus interest from June 30, 2016, and it is further,

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff, 135 East 57th Street, LLC., and against defendant, Infotech Solutions For Business, Inc., in the amount of \$807,688.55 plus interest from June 30, 2016, and it is further

ORDERED that the branch of the motion by plaintiff 135 East 57th Street, LLC directing the severing of plaintiff's claim for attorney's fees and disbursements is granted, and the Clerk is directed to sever the claims for attorneys' fees and disbursements, and it is further

ORDERED that plaintiff's severed claim for attorneys' fees shall continue, and an inquest to compute such amounts is referred to a Special Referee to hear and report; and it is further


ORDERED that within 14 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 sprefnyef@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 plaintiff 135 East 57th Street, LLC, shall serve a copy of this order on defendant Infotech Solutions For Business, Inc. and on the Trial Support Office at 60 Centre Street, Room 158; and it is further

ORDERED that this constitutes the decision and order of this Court.

HON. KATHRYN FREED
JUSTICE OF SUPREME COURT

7/11/2017
DATE


HON. KATHRYN E. FREED, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED
- SETTLE ORDER
- DO NOT POST

DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

APPLICATION:

CHECK IF APPROPRIATE:

REFERENCE