

**Board of Mgrs. of 220 Riverside Blvd. at Trump
Place Condominium v Moran**

2017 NY Slip Op 32128(U)

October 11, 2017

Supreme Court, New York County

Docket Number: 153988/2017

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

**THE BOARD OF MANAGERS OF 220 RIVERSIDE
BOULEVARD AT TRUMP PLACE CONDOMINIUM,**

INDEX NO. 153988/2017

MOTION DATE 9/18/17

Plaintiff,

MOTION SEQ. NO. 001

- v -

**TREVOR C. MORAN and "JOHN DOE" No. 1 through
"JOHN DOE" No. 15, et al.,**

Defendants.

The following papers, numbered 6-13, were read on this motion for entry of a default judgment.

Notice of Motion—Affirmation in Support—Exhibits A-E—Affidavit of
Service

■ Nos. 6-13

Motion by Plaintiff The Board of Managers of 220 Riverside Boulevard at Trump Place Condominium, against Trevor C. Moran ("Defendant") and "John Doe" No. 1 through "John Doe" No. 15, et al., for: (1) entry of a default judgment, pursuant to CPLR 3215; (2) dismissal of the action as against "John Doe" No. 1 through "John Doe" No. 15 and removal of the related omnibus clause in the case caption; and (3) referral of the matter for computation of a lien owed to Plaintiff, pursuant to RPAPL § 1321, is granted as follows:

BACKGROUND

Plaintiff commenced this action against Defendants on May 1, 2017 by filing a summons and verified complaint and a notice of pendency. (Holland Affirm. ¶ 4.) On May 9, 2017, at 12:35 PM, a person who is not a party to this action allegedly affixed a copy of the summons and complaint to the door of Defendant's actual place of dwelling, 240 Riverside Boulevard, Apartment 12D, New York, New York 10023, pursuant to CPLR 308 (4). (Holland Affirm. Ex. C.) The same person had allegedly attempted to serve the summons and complaint upon either Defendant or a person of suitable age and discretion at this address on May 3, 2017, at 8:12 PM, May 4, 2017 at 11:22 PM, and May 9, 2017 at 12:32

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

PM. (*Id.*) On May 9, 2017, after allegedly affixing the summons and complaint to the door of Defendant's actual place of dwelling, the same person allegedly mailed a copy of the summons and complaint to Defendant's last known address, 240 Riverside Boulevard, Apartment 12D, New York, New York 10023, which is also allegedly his actual place of dwelling, pursuant to CPLR 308 (4). (*Id.*) On August 14, 2017, a different person who is not a party to this action mailed an additional copy of the summons and complaint to Defendant's place of actual dwelling/last known address, pursuant to CPLR 3215 (g) (3) (i). (Holland Affirm. Ex. D.)

Plaintiff commenced this action to foreclose on a lien for common charges that allegedly became due and owing to Plaintiff on October 1, 2016 and that are allegedly owed and unpaid by Defendant as per the relevant section of Article 6 of the condominium by-laws. (Holland Affirm. ¶¶ 3, 6–8, 14, Ex. D ¶ 20.) The lien allegedly is against 220 Riverside Boulevard, Apartment 12M, New York, New York 10069 (the "Unit"), which Defendant owns in fee. (Holland Affirm. Ex. D ¶ 3.) Plaintiff allegedly filed the lien on March 23, 2017 for \$10,201.54, the original principal sum that Defendant allegedly owes to Plaintiff. (*Id.* at ¶ 10.) Having allegedly exhausted all available grace periods and triggered penalty provisions of Plaintiff's by-laws, Defendant, as of April 28, 2017, allegedly owes to Plaintiff \$11,888.81, as well as additional common charges, late charges, interest, and reasonable attorney's fees. (*Id.* at ¶¶ 22, 24.)

As Defendant has not appeared in this action, Plaintiff now moves for entry of a default judgment, to dismiss "John Doe" No. 1 through "John Doe" No. 15 from the action and remove the omnibus reference to them from the case caption, and for appointment of a referee to compute and ascertain the amount due to Plaintiff and to report whether the Unit should be sold in one or separate parcels.

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, a plaintiff demonstrates entitlement to a default judgment against a 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 A.D.3d 978 [2d Dept 2008]; *Allstate Ins. Co. v*

Austin, 48 A.D.3d 720 [2d Dept 2008]; *see also Liberty County Mut. v Avenue I Med., P.C.*, 129 A.D.3d 783 [2d Dept 2015].)

On the instant motion, Plaintiff presents proof of adequate service pursuant to CPLR 308 (4) and 3215 (g) (3) (i). In addition, Plaintiff offers adequate proof of the facts underlying its claim through its verified complaint. Further, Defendant has not appeared and has not submitted any papers in opposition to the instant motion. As such, Plaintiff's motion is granted.

CONCLUSION

Accordingly, it is ORDERED that Plaintiff's motion for entry of a default judgment, pursuant to CPLR 3215, is granted without opposition submitted; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Plaintiff; and it is further

ORDERED that defendants "John Doe" No. 1 through "John Doe" No. 15 are hereby dismissed without prejudice from this action; and it is further

ORDERED that the omnibus clause in the instant action's caption, "and "JOHN DOE" No. 1 through "JOHN DOE" No. 15, *et al.*," is hereby deleted; and it is further

ORDERED that the action is referred to Michael J. Roberts, Esq., having an office at 401 Broadway Apartment 1902, New York, New York 10013, telephone number (212) 226-4925, as Referee, to compute the amount due to Plaintiff for common charges, interest, late charge assessments, disbursements, and attorney's fees, as provided for in Plaintiff's affirmation and in the by-laws, and to report whether the Unit should be sold in parcels, and that the Referee make his report to the Court no later than sixty days of the date of this order and that, except for good cause shown, Plaintiff shall move for judgment no later than sixty days of the date of the Referee's Report; and it is further

ORDERED that upon submission of the referee's report, Plaintiff shall pay \$500 to the Referee as compensation for his services, which sum may be recouped as a cost of litigation; and it is further

ORDERED that the Referee’s hearing be had in the County of New York; and it is further

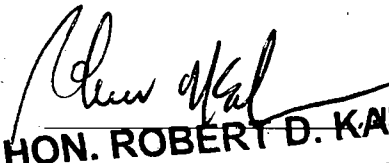
ORDERED that the Referee appointed herein is subject to the requirements of Rule 36.2 (c) of the Chief Judge, and if the referee is disqualified from receiving an appointment pursuant to the provision of that Rule, the Referee shall notify the Appointing Judge forthwith; and it is further

ORDERED that, by accepting this appointment, the Referee certifies that he is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to, Section 36.2 (e) (“Disqualifications from appointment”) and Section 36.2 (d) (“Limitations on appointments based upon compensation”); and it is further

ORDERED that Plaintiff shall serve a copy of this decision upon the Clerk of the Court and upon all parties having interest in the Unit.

The Foregoing constitutes the ORDER and Decision of the Court.

Dated: October 11, 2017
New York, New York


HON. ROBERT D. KAISH
J.S.C.

- 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