

**24 E. 12th St. Assoc., LLC v Nadelson**

2017 NY Slip Op 32325(U)

November 1, 2017

Supreme Court, New York County

Docket Number: 151783/2016

Judge: Kathryn E. Freed

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

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 PART 2

Justice

-----X

24 EAST 12TH STREET ASSOCIATES, LLC

INDEX NO. 151783/2016

Plaintiff,

MOTION DATE

- v -

ELLIOT NADELSON,

MOTION SEQ. NO. 002

Defendant.

DECISION AND ORDER

-----X

The following e-filed documents, listed by NYSCEF document number 14, 15, 16, 17, 18, 19, 20, 21, 22

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, it is ordered that the motion is granted.

In this action to collect on a promissory note, plaintiff 24 East 12th Street Associates, LLC moves, pursuant to CPLR 3215, for a default judgment against defendant Elliot Nadelson. Defendant does not oppose the motion. After a review of plaintiff's motion, as well as the relevant statutes and case law, the motion is granted.

In January of 1996, plaintiff 24 East 12th Street Associates, LLC, as landlord, entered into a ten-year lease with Elliot Nadelson, as tenant, for Suite 2-1 at 88 University Place in Manhattan. Ex. D. In September of 2006, the lease was extended for an additional 10-year period. Id.

On March 20, 2014, “plaintiff agreed to convert the defendant’s rent arrears, as of that date, into a promissory note” (“the note”). Rosengarten Aff., at par. 6; Ex. E. Pursuant to the note, defendant agreed to repay plaintiff the sum of \$60,549.54 in 60 monthly installments of \$1,088.00. Ex. E.

On March 2, 2016, plaintiff commenced this action by filing a summons with notice against defendant alleging that he owed \$41,083.92 plus interest of 16%, costs and legal fees on the note, as well as \$44,196.48 plus interest, costs and legal fees for breaching the lease. Ex. A.

On May 2, 2017, plaintiff moved, pursuant to CPLR 3215, for a default judgment against defendant, claiming that defendant owes it \$43,209.98 as a result of defendant’s default on the note, \$44,196.48 for amounts due pursuant to the lease; and \$2,375.00 for attorneys’ fees, plus pre-judgment and post-judgment interest.

By order dated July 24, 2017, this Court denied plaintiff’s motion with leave to renew on proper papers on the ground that plaintiff failed to establish the facts constituting the claim. Plaintiff now renews its motion, submitting the affidavit of its principal, Gerald Rosengarten, to remedy the deficiency in its initial motion. In his affidavit in support of the instant motion, Rosengarten states that plaintiff is owed \$43,209.98 on the note, \$44,196.48 for rent arrears, and \$2,375 for legal fees in accordance with the terms of the note. Although the affidavit technically sets forth facts constituting the claim so as to satisfy CPLR 3215, it is unclear why plaintiff

seeks separate awards pursuant to the note and for rent arrears given Rosengarten's admission that "plaintiff agreed to convert the defendant's rent arrears, as of [March 20, 2014], into a promissory note" ("the note"). Rosengarten Aff., at par. 6. This suggests that monies sought on the note and pursuant to the lease may be duplicative. Therefore, plaintiff's motion is granted to the extent that it is awarded a judgment of default, but this Court refers this matter to a Special Referee to compute the amount of damages. The issue of the amount of attorneys' fees to be awarded plaintiff pursuant to the note is similarly referred to the Special Referee. In this regard, this Court notes that it has not been provided with any proof, i.e., bills, establishing the reasonableness of the fees claimed, but merely the conclusory statements of counsel regarding his work on the file.

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

**ORDERED** that plaintiff's motion for a default judgment is granted; and it is further

**ORDERED** that this matter is referred to a Special Referee for the purpose of conducting an inquest as to damages and to calculate reasonable attorneys' fees to be awarded to plaintiff; 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 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 twenty days hereof, plaintiff shall serve a copy of this order on defendant 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.

11/1/2017  
DATE

  
KATHRYN E. FREED, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	DO NOT POST	<input type="checkbox"/>	REFERENCE

APPLICATION:  DENIED

CHECK IF APPROPRIATE: