

**Residential Bd. of Trump Tower Condominium v
Delano S.A.**

2018 NY Slip Op 30064(U)

January 10, 2018

Supreme Court, New York County

Docket Number: 153724/2017

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

PART 2

Justice

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RESIDENTIAL BOARD OF TRUMP TOWER CONDOMINIUM,

INDEX NO. 153724/2017

Plaintiff,

MOTION DATE

- v -

MOTION SEQ. NO. 001

DELANO S.A., and "JOHN DOE" No. 1 through "JOHN DOE" No. 15, the true name of said defendants being unknown to plaintiff, the parties intended to be those persons having or claiming an interest in the mortgaged premises described in the complaint by virtue of being tenants, or occupants, or judgment-creditors, or lienors of any type or nature in all or part of said premises,

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number 6, 7, 8, 9

were read on this motion to/for

JUDGMENT - DEFAULT

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

Plaintiff, Residential Board of Trump Tower Condominium, moves against defendant Delano S.A. 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 to a referee, pursuant to RPAPL 1321, for computation of the amount due to plaintiff on a lien. After a review of the motion, as well as consideration of the relevant statutes and case law, the motion, which is unopposed, is granted.

FACTUAL AND PROCEDURAL BACKGROUND

On or about March 27, 1984, defendant Delano S.A. (“defendant”) purchased a condominium unit, apartment 49J, Block 1292, Lot 1155 (“the unit”), at 725 Fifth Avenue, New York, New York, also known as Trump Tower Condominium. Ex. B to Doc. 8.¹ Defendant subsequently failed to pay common charges, additional common charges, assessments, late charges, and attorneys’ fees which were due between March 1, 2015 and May 3, 2016. Ex. A to Doc. 8. On or about May 3, 2016, plaintiff Residential Board of Managers of Trump Tower Condominium filed a lien against the unit, claiming that it owed \$47,831.31 in outstanding charges. Ex. A to Doc. 8.

On April 24, 2017, plaintiff commenced the captioned action against defendant, fee owner of the unit, and “John Doe” No. 1 through “John Doe” No. 15, *et al.*, the latter of whom were named as unknown occupants or individuals with possible interests in the unit, by filing a summons and verified complaint and a notice of pendency. Docs. 1 and 2. Plaintiff alleged in the complaint, which was verified by Sonja Talesnik, its Assistant Secretary, that, since the grace period for paying the common charges, assessments, late charges and interest had expired, it was entitled to foreclose on the lien filed as a result of \$47,831.31 in such charges, as well as to collect attorneys’ fees pursuant to Article 6 of the condominium’s By-Laws. Doc. 1, at pars. 6-8, 10, 12, 14.

On May 1, 2017, plaintiff served process on defendant via the Secretary of State pursuant to Business Corporation Law (“BCL”) § 306. Doc. 3. An additional copy of the summons and complaint was mailed to defendant at its last-known business address pursuant to CPLR

¹ All references are to the documents filed with NYSCEF in connection with this matter.

3215(g)(4)(i) on August 25, 2017. Ex. F to Doc. 8. To date, defendant has failed to answer or otherwise appear in this action. Holland Aff. In Supp., at par. 12.

Plaintiff now moves for: (1) entry of a default judgment against defendant 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 to a referee, pursuant to RPAPL 1321, for computation of the amount owed to plaintiff. The motion, which was served on defendant on August 28, 2017, is unopposed. In support of the motion, plaintiff's counsel, Robert T. Holland, Esq., asserts, inter alia, that, as of August 25, 2017, defendant owed plaintiff \$104,884.63. Holland Aff., at par. 22.

LEGAL CONCLUSIONS:

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).

Here, plaintiff presents proof of adequate service pursuant to BCL 306 and 3215 (g)(4)(i). In addition, plaintiff offers adequate proof of the facts constituting its claim by means of the

complaint verified by Talesnik. Further, the affirmation of plaintiff's counsel establishes that defendant has not answered or otherwise appeared in this action. Moreover, defendant has not submitted any papers in opposition to the instant motion. Thus, plaintiff's motion is granted and the matter is referred to a Referee for a determination as to the amount owed by defendant, as well as attorneys' fees.

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

ORDERED that the motion by plaintiff Residential Board of Trump Tower Condominium for entry of a default judgment against defendant Delano S.A. pursuant to CPLR 3215 is granted without opposition; 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 Robert Michael Brill, Esq., having an office at 880 Third Avenue, 13th Floor, New York, New York 10022, telephone number: (212) 935-7900, e-mail: brillesq@aol.com, as Referee, to compute the amount due to plaintiff for common charges, interest, assessments, late charges, disbursements, and attorneys' fees, as provided for in the verified complaint and in the by-laws, and to report whether the unit should be sold in parcels, and that the Referee make his report to this Court no later than sixty days after the date of this order and that, except for good cause shown, plaintiff shall move for judgment no later than sixty days after 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

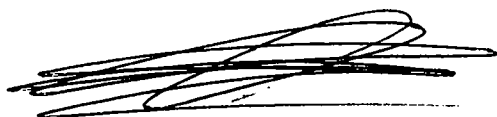
ORDERED that the Referee appointed herein is subject to the requirements of Rule 36.2 (c) of the Chief Judge, and if the referee is disqualified from receiving an appointment pursuant to the provision of that Rule, the Referee shall notify the Appointing Judge forthwith; and it is further

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, within 10 days after this order is uploaded to NYSCEF, serve a copy of this decision upon all parties having interest in the Unit by overnight mail and, by that same date, shall provide a copy of this order to the County Clerk; and it is further

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

1/10/2018
DATE


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