

North End Assoc., LLC v Los
2018 NY Slip Op 30416(U)
March 9, 2018
Supreme Court, New York County
Docket Number: 160616/2016
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED
Justice

PART 2

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NORTH END ASSOCIATES, LLC,
Plaintiff,

INDEX NO. 160616/2016

- v -

JOHN LOS,
Defendant.

MOTION SEQ. NO. 001

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

were read on this motion to/for DEFAULT JUDGMENT

Upon the foregoing documents, it is ordered that the motion is granted without opposition.

In this action sounding in breach of a guaranty of lease, failure to pay rent and other costs under the lease, and for attorneys' fees and other costs and disbursements, plaintiff North End Associates, LLC seeks an order, pursuant to CPLR 3215(a), directing that a default judgment be entered in its favor as against defendant John Los due to said defendant's failure to answer or otherwise appear in this matter and, upon his default, directing that a judgment of \$66,247.02 be entered against him, together with statutory interest, costs and disbursements. After a review of the papers presented, as well as the relevant statutes and case law, the motion is **granted without opposition.**

Factual and Procedural Background:

Plaintiff commenced this action by filing a summons and verified complaint against defendant on December 16, 2016. Doc. 1.¹ In the complaint, verified by plaintiff's officer Christopher V. Albanese, plaintiff alleged that, pursuant to a written lease, it rented to Timothy Los (tenant) apartment 18D in the building known as 211 North End Avenue, New York, NY, for a one year period commencing September 1, 2012 and ending August 31, 2013. The lease was most recently renewed for a term commencing September 1, 2015 and ending August 31, 2016. Docs. 9 and 10. On August 31, 2012, defendant executed a personal guarantee pursuant to which he undertook the obligation to pay tenant's debts arising from the lease. Docs. 9 and 20. Pursuant to the lease, tenant was obligated to pay, inter alia, the monthly rent set forth in the lease, electrical charges, as well as a membership fee for the fitness club. Docs. 9 and 20. Tenant was also required to reimburse plaintiff for any legal fees and disbursements for any legal actions incurred by plaintiff due to tenant's default under the lease. Docs. 9 and 20.

Plaintiff commenced nonpayment proceedings against tenant in New York City Housing Court. On February 24, 2016, plaintiff was awarded a final judgment against tenant in the amount of \$33,209.58, representing rent due through February 29, 2016, as well as \$2,818.65 in legal fees, without prejudice to seek additional legal fees. Tenant was evicted from the apartment on April 26, 2016. Plaintiff thereafter re-let the apartment on August 11, 2016. Docs. 11, 12 and 13.

Plaintiff now moves, by notice of motion filed October 12, 2017, for a default judgment against defendant pursuant to CPLR 3215(a). Plaintiff demands that, upon defendant's default, it is entitled to a total judgment of \$66,247.02, consisting of \$33,209.58 as a result of a Housing Court judgment against tenant; \$20,511.93 in rent due from tenant from March 2016 through

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

August 2016; \$2,818 as a result of a Housing Court legal fee judgment against Timothy Los; \$6,085.50 in legal fees incurred after February 2, 2017 in the second Housing Court proceeding; and \$3,621.36 in legal fees incurred through October 10, 2017 in the captioned action, plus costs and statutory interest. Docs. 19-27.

In support of the motion, plaintiff submits the affirmation of its attorney, Julian M. Rodriguez, Esq., an associate of the law firm of Belkin Burden Wenig & Goldman, LLP (Doc. 4), the affidavit and supplemental affidavit of Matthew Veralli, an employee of Rose Associates, Inc., plaintiff's registered property manager for the subject building (Doc. 5)², the lease, renewal lease, and guaranty (Docs. 9, 10, 20, 21) copies of the Housing Court judgments (Docs. 11, 12, 13, 22, 25), the rent ledger for the subject apartment (Docs. 14, 23), the nonpayment legal fee invoices (Docs. 15, 26), and the guarantor action legal fee invoices (Docs. 16, 27).

Plaintiff's Argument:

Plaintiff argues that it is entitled to a default judgment against defendant because the latter was properly served with process, failed to answer or otherwise appear in this action, and plaintiff's motion sets forth the facts constituting the claim against defendant.

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

² This Court notes that Veralli's initial affidavit, which sought damages of \$66,302.02, did not precisely itemize the amounts demanded. Doc. 5. However, Veralli's supplemental affidavit (Doc. 19), which seeks \$66,247.02, does specifically itemize the amounts for which plaintiff seeks to recover.

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." *See Atlantic Cas. Ins. Co. v R.J.N.J Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011). Further, a default in answering the complaint is deemed to be an admission of all factual statements contained in the complaint and all reasonable inferences which flow from them. *See Woodson v Mendon Leasing Corp.*, 100 NY2d 62 (2003).

Here, plaintiff is entitled to a default judgment against defendant since it established proof of service of the summons and verified complaint (Doc. 2), additional service of the summons and complaint pursuant to CPLR 3215(g)(3) (Doc. 8), defendant's failure to answer or otherwise move against the verified complaint (Doc. 4, at par. 5), and the facts giving rise to the claim, as set forth in the verified complaint (Doc. 6) and the affidavits of Veralli (Docs. 5 and 19). These documents establish that plaintiff is entitled to a default judgment against defendant in the amount of \$66,247.02.³

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

ORDERED that the motion by plaintiff North End Associates, LLC, for a default judgment against defendant John Los, is granted in the amount of \$66,247.02, plus interest at the statutory rate from August 31, 2016, as well as costs and disbursements; and it is further,


³ Although plaintiff initially demanded judgment in the amount of \$66,302.02, the amount demanded was reduced by \$55 for reasons explained in Mr. Veralli's supplemental affidavit. Doc. 19, at par. 19, fn 2.

ORDERED that the Clerk is directed to enter a judgment in favor of plaintiff North End Associates, LLC, and against defendant John Los, in the amount of \$66,247.02, plus interest at the statutory rate from August 31, 2016, as well as costs and disbursements; and it is further

ORDERED that plaintiff North End Associates, LLC, shall serve a copy of this order on defendant John Los, 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 the court.

3/9/2018
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	DO NOT POST	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE