

Hillside Gardens Owners, Inc. v Armstrong Realty Mgt. Corp.
2018 NY Slip Op 32653(U)
October 17, 2018
Supreme Court, New York County
Docket Number: 651210/2015
Judge: Tanya R. Kennedy
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. TANYA R. KENNEDY

PART

IAS MOTION 63

Justice

-----X

HILLSIDE GARDENS OWNERS, INC.,

Plaintiff,

- v -

ARMSTRONG REALTY MANAGEMENT CORP.
and MARK MASSEY,

Defendants.

INDEX NO.

651210/2015

MOTION DATE

N/A

MOTION SEQ. NO.

004

DECISION AND ORDER

-----X

Upon the foregoing documents, the decision on Plaintiff's motion for entry of a default judgment against Defendant Armstrong Realty Management Corp. ("Defendant Armstrong"), pursuant to CPLR 321 is as follows:

Plaintiff, a cooperative corporation, commenced this negligence and breach of contract action against its managing agent, Armstrong Realty Management Corp ("Defendant Armstrong") and Defendant Armstrong's principal, Mark Massey (collectively, "Defendants") on April 13, 2015. Defendants, through its then-counsel, Law Offices of Clausen Miller P.C. ("Clausen"), filed its verified answer on or about June 22, 2015. Massey verified the answer both individually and as president of Defendant Armstrong. On or about April 10, 2017, defense counsel, Clausen, moved by Order to Show Cause (OSC) for permission to withdraw as counsel. Plaintiff opposed that motion. Justice Coin issued a Decision and Order, dated May 24, 2017, which granted the OSC and ordered Clausen to serve upon its corporate client, a copy of the order with notice of entry, along with "a notice directing [Defendant Armstrong] to appoint [a] substitute attorney within 30 days from the date of mailing the notice and warning that failure to appoint substitute counsel shall result in entry of a default judgment upon appropriate motion."

Thereafter, on or about May 25, 2017, Clausen then filed its notice of entry and an affidavit of service indicating that Defendant Armstrong was served with a copy of the order with notice of entry on May 25, 2017. As such, Defendant Armstrong had until June 25, 2017 to retain new counsel, but failed to do so. Plaintiff's counsel then filed this motion on May 18, 2018.

CPLR 321(a) provides that "[a] corporation or voluntary association shall appear by attorney..." Defendant Armstrong neither complied with Justice Coin's order nor sought an extension of time to comply with such order and Plaintiff has demonstrated its entitlement to the requested relief.

Therefore, considering the foregoing, Plaintiff's motion for entry of a default judgment against Defendant Armstrong is granted.

Accordingly, it is

ORDERED that an assessment of damages against Defendant Armstrong is directed; it is further

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to determine: (1) the amount of money damages, due and owing to Plaintiff by Defendant Armstrong; and it is further

ORDERED that the powers of the JHO/Special Referee to determine shall not be limited further than as set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119 M, 646-386-3028 or spref@courts.state.ny.us) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this Court at www.nycourts.gov/supctmanh at the

"Local Rules" link), shall assign this matter to an available Special Referee to determine as specified above; and it is further

ORDERED that plaintiff's counsel shall serve a copy of this order with notice of entry on defendant and that counsel for plaintiff shall, after thirty days from service of those papers, submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (which can be accessed at <http://www.nycourts.gov/courts/1jd/suptctmanh/refpart-infosheet-10-09.pdf>) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4318) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and that the parties shall appear for the reference hearing, including with all such witnesses and evidence as they may seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referee's Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue specified above shall proceed from day to day until completion.

This constitutes the decision and order of the Court.

October 17, 2018
DATE

CHECK ONE:

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CASE DISPOSED

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GRANTED

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DENIED

APPLICATION:

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SETTLE ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

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NON-FINAL DISPOSITION

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GRANTED IN PART

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SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☒

OTHER

☒

REFERENCE

Hon. Tanya R. Kennedy
TANYA R. KENNEDY, J.S.C.
TANYA R. KENNEDY
J.S.C.