

Empire LLC v Diamond Tech. Enters.

2018 NY Slip Op 32771(U)

October 25, 2018

Supreme Court, New York County

Docket Number: 157534/2017

Judge: Kathryn E. Freed

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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 IAS MOTION 2

Justice

-----X

INDEX NO. 157534/2017

EMPIRE LLC,

Plaintiff,

MOTION SEQ. NO. 001

- v -

DIAMOND TECHNOLOGY ENTERPRISES, ED & SERGE GOLD
AND DIAMOND CORP., EDUARD MUSHEYEV

DECISION AND ORDER

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17

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: 1) on the first and second causes of action, for unpaid pre-vacatur rent and additional rent and post vacatur base rent and additional rent as liquidated damages plus re-letting expenses from defendant Diamond Technology Enterprises ("DTE") and Ed & Serge Gold and Diamond Corp. ("ESGDC"); 2) on the third and fourth causes of action, to collect rent and damages from defendant Eduard Musheyev ("Guarantor"); and 3) on the fifth and sixth causes of action, to collect reasonable attorneys' fees from all defendants, jointly and severally, along with statutory interest, fees, and costs against all defendants, plaintiff Empire LLC ("plaintiff") moves, pursuant to CPLR 3215, for a default judgment. After a review of the motion papers, as well as a review of the relevant statutes and case law, the application, which is unopposed, is granted.

Plaintiff commenced the captioned action against defendants by filing a summons and verified complaint against them on August 23, 2017. (Doc. 1). Personal service was made on the Guarantor on August 30, 2017. (Doc. 2). Defendants Ed & Serge Gold and Diamond Corp., were served on August 28, 2017 by service on the Secretary of State. (Doc.3). Finally, service was effectuated on defendant DTE by substituted service on Musheyev, who was authorized to accept service. (Doc. 4). Additionally, each service included Notice pursuant to CPLR 3215.

On June 20, 2018, plaintiffs filed the instant motion, pursuant to CPLR 3215, seeking a default judgment against defendant. In support of the motion, which is unopposed, plaintiff submitted, inter alia, an attorney affirmation, an affidavit from Alan B. Abramson, a member of plaintiff personally familiar with this matter, and exhibits including the deed, the lease, the guaranty, a brokerage bill, and proof of non-military service for Musheyev. (Docs. 10 – 15). The Abramson affidavit lays out in detail how the amount allegedly due plaintiff, totaling \$221,291.10, was calculated.

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 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.” *Atlantic Cas. Ins. Co. v RJNJ Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011). Moreover, a default in answering the complaint is deemed to be an admission of all factual statements contained in the complaint and all reasonable inferences that flow from them. *See Woodson v Mendon Leasing Corp.*, 100 NY2d 63 (2003).

In the case at bar, plaintiff has met each of the foregoing requirements, by submitting an affidavit of service establishing that the summons and verified complaint were properly served on defendants, including service pursuant to CPLR 3215. Additionally, in the affirmation in support of the motion, plaintiff's counsel represents that defendants have failed to answer the complaint.

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

ORDERED that the branch of the motion by plaintiff Empire, LLC, for a default judgment on the first and second causes of action for unpaid pre-vacatur rent and additional rent and post vacatur base rent and additional rent as liquidated damages, plus re-letting expenses against defendant Diamond Technology Enterprises and Ed & Serge Gold and Diamond Corp. is granted in the amount of \$221,291.10; and it is further,

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff, Empire, LLC, and against defendants Diamond Technology Enterprises and Ed & Serge Gold and Diamond Corp., in the amount of \$221,291.10, and it is further

ORDERED that the branch of the motion by plaintiff Empire, LLC, for a default judgment on the third and fourth causes of action to collect rent and damages against defendant Eduard Musheyev as Guarantor in the amount of \$221,291.10, is granted; and it is further,

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff, Empire, LLC., and against defendant Eduard Musheyev, in the amount of \$221,291.10, and it is further

ORDERED that the branch of the motion by plaintiff Empire, LLC directing the severing of plaintiff's claim on the fifth and sixth causes of action to collect reasonable attorneys' fees from all defendants, jointly and severally, along with statutory interest, fees, and costs against all defendants is granted, and the Clerk is directed to sever the fifth and sixth causes

of action to collect reasonable attorneys' fees, jointly and severally against all defendants along with statutory interest, fees, and costs, and it is further

ORDERED that plaintiff's severed claim for attorneys' fees along with statutory interest, fees, and costs shall continue, and an inquest to compute such amounts is referred to a Special Referee to hear and report; 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 sprefnyef@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 plaintiff Empire, LLC, shall serve a copy of this order on defendants Diamond Technology Enterprises, Ed & Serge Gold and Diamond Corp. and on Eduard Musheyev 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.

10/25/2018
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 checked="" type="checkbox"/>	GRANTED				GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	<input type="checkbox"/>
							REFERENCE