

Goldenberg v Friedman
2018 NY Slip Op 33972(U)
May 2, 2018
Supreme Court, Rockland County
Docket Number: 034866/2016
Judge: Thomas E. Walsh II
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
Eugene Goldenberg, Universal Steeplejack Master
Rigger, LLC and Seth Eisenberger

Plaintiff(s)

-against-

Chaim M. Friedman and Brewer Holdings, LLC,

Defendant(s)

-----X
Thomas E. Walsh II, J.S.C.

DECISION & ORDER

Index No. : 034866/2016
Motion # 8 - MG and MD
DC - N
Adj: 6/6/18

The following papers, numbered 1-4 - were considered in connection with Plaintiff Seth Eisenberger's Notice of Motion for an Order (1) granting a default judgment against Defendant Brewer Holdings, LLC for failure to timely answer the complaint, (2) granting Plaintiff Seth Eisenberger, Esq. a protective order and a retaining lien against all documents in his possession, (3) sanctioning Defendant's counsel or record Jeremy Rosenberg, Esq. for failure to appear before this Court on March 1, 2018 as a scheduled court conference and (4) for such other and further relief as the Court deems just and equitable:

<u>PAPERS</u>	<u>NUMBERED</u>
Notice of Motion (Motion #8)/Affirmation of Seth Eisenberger, Esq./	
Exhibits (A-B)	1
Affirmation of Michael P. O'Connor, Esq. in Opposition/Affidavit of Chaim Friedman/Exhibits (A-B)	2
Affirmation of Jeremy Rosenberg, Esq.	3
Affirmation of Seth Eisenberger, Esq in Reply	4

Plaintiff, *pro se*, Seth Eisenberger, Esq. has filed the instant motion seeking a default judgment against Brewer Holdings, LLC for the failure to respond. The action was commenced by the filing of a Summons and Complaint, filed with the Rockland County Clerk

on November 8, 2016. The affidavit of service attests that the Defendant Brewer Holdings, LLC was served on November 9, 2016 by serving the Secretary of State. Defendant Chaim Friedman was served on December 8, 2016 pursuant to Civil Practice Law and Rules § 308(2) (service of his son, Moshe). Defendants Friedman and Brewer Holdings, Inc. through their then counsel, Jeremy Rosenberg, Esq. filed a pre-answer motion to dismiss on January 24, 2017.¹ On March 30, 2017 Mr. Rosenberg submitted a Stipulation (Doc #33) indicating that he was withdrawing the aforementioned pre answer motion to dismiss. Despite this withdrawal, no answer was filed by Mr. Rosenberg on behalf of Defendants Friedman and Brewer Holdings, LLC.

On April 21, 2017, Seth Eisenberger, Esq. filed an amended Complaint (Doc. #34). Again, Jeremy Rosenberg, Esq. filed a pre-answer motion to dismiss on behalf of Defendants Friedman and Brewer Holdings, LLC. While the Court's decision on Defendants motion to dismiss was pending extensive discovery and resultant motion practice occurred. On January 5, 2018 the Court issued a Decision and Order addressing motions #3 (the pre-answer motion to dismiss filed in June 2017) and the subsequent discovery compliance and related relief motions (Motions # 4, 5 and 6). Seth Eisenberger, Esq. filed a Notice of Entry on January 12, 2018. Neither Defendant Friedman or Brewer Holdings, LLC filed a timely answer after the filing of the Notice of Entry. Defendants hired attorney Michael O'Connor, who filed a Notice of Appearance on their behalf on January 31, 2018.

In a separate Decision the Court has already addressed the issues that Attorney O'Connor encountered in obtaining consent of Jeremy Rosenberg, Esq. to withdraw as counsel for Defendants Friedman and Brewer Holdings, LLC. The Court in it's Decision relieved Jeremy Rosenberg, Esq. and granted Michael O'Connor's application to appear on behalf of the Defendants. In that same Decision the Court denied the Defendants application to extend time to file an answer. Therefore, as the Defendants Friedman and Brewer Holdings, LLC have failed to timely file an answer, the Plaintiff Seth Eisenberger has sought a default judgment.

¹ The Court notes that despite the filing of a motion to dismiss by Jeremy Rosenberg, Esq. on January 24, 2017, Mr. Rosenberg did not file a Notice of Appearance on behalf of the Defendants.

In opposition Defendants assert that Plaintiff Eisenberger's application for a default judgment is "unnecessary" and "redundant." Further, Defendants submit that their motion to extend time was pending at the time that Plaintiff filed the instant motion.

Upon consideration of the arguments raised by the parties and the Court's denial of the Defendant's motion to extend time to file an answer (Motion #7) which is being issued simultaneously, the Plaintiff's motion for a default judgment is granted.

As to Plaintiff's motion for protective, the Court first notes that Seth Eisenberger, Esq. was previously disqualified from representing the Plaintiffs. In his instant application he argues that the documents sought by Defendants are communications between plaintiffs and their attorneys in which they assisted in the instant litigation and the "underlying litigation." The Plaintiff, Mr. Eisengerger is attempting to invoke the attorney-client privilege as to these documents on behalf of the other Plaintiffs, for whom he was disqualified from representing. As such, Plaintiff Eisenberger's application is denied as improper.

The Court has also considered Plaintiff Eisenberger's application to sanction the Defendant's former attorney, Jeremy Rosenberg, Esq. for failure to appear on March 1, 2018 at a scheduled court conference and in the Court's discretion that application is also denied.

Upon the foregoing papers,

ORDERED that Plaintiff's Notice of Motion (Motion #8) is granted in part and denied in part consistent with the Court's Decision; and it is further

ORDERED that the parties are to appear for a previously scheduled appearance on **WEDNESDAY JUNE 6, 2018 at 9:30 a.m.**

The foregoing constitutes the Decision and Order of this Court on Motion #8.

Dated: New City, New York
May 2, 2018



HON. THOMAS E. WALSH II
Justice of the Supreme Court

TO:

MARK J. KURZMANN, ESQ.
Attorney for Plaintiffs
(via e-file)

SETH EISENBERGER, ESQ.
Plaintiff, Pro Se
(via e-file)

MICHAEL P. O'CONNOR, ESQ.
LAW OFFICES OF MICHAEL P. O'CONNOR, Esq.
Incoming Attorney for Defendants FRIEDMAN and BREWER HOLDINGS, LLC
(via e-file)

JEREMY ROSENBERG, ESQ.
Outgoing Attorney for Defendants FRIEDMAN and BREWER HOLDINGS, LLC
(via e-file)