

McGraw-Hill Global Educ. Holdings, LLC v NetWork Group, LLC
2019 NY Slip Op 30004(U)
January 3, 2019
Supreme Court, New York County
Docket Number: 153121/2018
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2

Justice

-----X INDEX NO. 153121/2018

MCGRAW-HILL GLOBAL EDUCATION HOLDINGS, LLC,

Plaintiff,

MOTION SEQ. NO. 002

- v -

NETWORK GROUP, LLC,

Defendant.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for JUDGMENT - DEFAULT

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

The underlying action was commenced on or about April 7, 2018 by service of the Summons and Complaint (Doc. No. 3) by plaintiff, McGraw-Hill Global Education Holdings, LLC, (hereinafter "MHEH") for breach of contract or, in the alternative, for money had and received, against defendant NetWork Group, LLC ("NetWork"). Plaintiff alleges that in 2016, MHEH was searching for office space and entered into a sublease with defendant. In consideration for the sublease, MHEH "provided Network with a \$75,000 security deposit and \$150,000 in prepaid sublease fees." See Complaint, ¶ 3, Doc No. 2. Plaintiff alleges that defendant failed to fulfill its obligations under the sublease, defaulted on the master lease, was unable to deliver the space to MHEH, and failed to return the fees. Plaintiff further alleges that NetWork's CEO and managing member, Frank Bistran, has "repeatedly acknowledged

NetWork's debt to MHEH and repeatedly promised that payment would be forthcoming." Id at ¶ 5.

Plaintiff initially moved for a default judgment against defendant on May 15, 2018. By order entered September 24, 2018, this Court denied the motion with leave to renew. Doc. No. 14.

MHEH now moves to renew its motion for a default judgment against NetWork. Plaintiff, through its attorney, Saul B. Shipiro, Esq., a member of the law firm of Patterson Belknap Webb & Tyler LLP, affirms that the summons and complaint were properly served on defendant (Doc. No. 16) and that the time for defendant to answer has expired without defendant answering or otherwise moving in any manner with respect to said complaint. Id., at ¶¶ 3 and 4. In addition to referencing the documents appended to the renewal motion, Shapiro asks for pre-judgment interest from July 20, 2017, for legal fees of \$16,435.74, and for disbursements totaling \$716.44. Id at ¶ 10.

Plaintiff also submits an affidavit in support of the instant motion signed by its Vice President, Real Estate, Thomas Rooney. Doc. No. 21. Rooney avers that he has reviewed the complaint, that he is familiar with the facts and circumstances detailed therein, and that the allegations in the complaint are true and accurate to the best of his knowledge. Id.

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 N.Y.2d 63 (2003).

In response to this Court's order, plaintiff has annexed the sublease (Doc. No.22), the letter agreement between the parties (Doc. No. 23), a record of payment, including copies of the checks paid by plaintiff to defendant (Doc. No. 23), and emails by defendant acknowledging the debt (Docs. No. 25 and 26). MHEH also annexes a notice to defendant of its intent to sue for the monies owed to it, including for costs and attorneys' fees as provided under the sublease. Doc. No. Finally, plaintiff annexes proof of service of its renewed motion for a default judgment. Therefore, plaintiff has established its entitlement to a default judgment pursuant to CPLR 3215.

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


ORDERED that the motion by plaintiff McGraw-Hill Global Education Holdings, LLC, against defendant NetWork Group, LLC for a default judgment is granted; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff and against defendant NetWork Group, LLC in the amount of \$225,000.00, plus attorneys' fees of \$16,435.74, together with disbursements of \$716,44 for a total judgment of \$242,152.19, plus statutory interest on the \$225,000.00 from July 20, 2017, to be taxed by the Clerk, and it is further,

ORDERED that, within 20 days of the posting of this order to NYSCEF, plaintiff shall serve a copy of the same, with notice of entry, on defendant, as well as on the Clerk of the Court, who is directed to enter judgment accordingly; and it is further

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

1/3/2019
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

REFERENCE