

Yaofei Chen v Minxing Wang
2019 NY Slip Op 30870(U)
April 1, 2019
Supreme Court, New York County
Docket Number: 651874/2018
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOEL M. COHEN PART IAS MOTION 3EFM

Justice

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INDEX NO. 651874/2018

YAOFEI CHEN, CHEF WANG'S HOUSE, LLC, UPPER WEST LEGEND, LLC,

MOTION DATE 01/31/2019

Plaintiffs,

MOTION SEQ. NO. 002

- v -

MINXING WANG, DINGGEN WANG, HONGFEI ZHANG, CHENWEN HO, KIG CAPITAL ADVISOR

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 28, 29, 30, 31, 32, 33, 34, 35

were read on this motion for JUDGMENT - DEFAULT

Upon the foregoing documents:

Plaintiffs Yaofei Chen, Chef Wang's House, LLC and Upper West Legend, LLC move for a default judgment, pursuant to CPLR § 3215, against Defendants Minxing Wang and Dinggen Wang for failure to timely appear, answer, or otherwise move with respect to the complaint. The remainder of the named Defendants have appeared in this matter. For the reasons described below, the unopposed motion for default judgment is granted.

Plaintiffs have submitted un rebutted evidence demonstrating compliance with the requirements of CPLR § 3215. Therefore, Plaintiffs' motion for default judgment is granted as to liability. The relief sought in the Verified Complaint as to the first and second causes of action as against Defendant Minxing Wang is for a sum certain of \$51,000.00, together with statutory interest. The relief sought in the Verified Complaint as to the third and fourth causes of action as against Defendant Dinggen Wang is for a sum certain of \$112,000.00, together with statutory interest. As such, Plaintiffs' motion for default judgment is granted as to damages for

the first and second causes of action as against Defendant Minxing Wang and as to damages for the third and fourth causes of action as against Defendant Dinggen Wang.

The relief sought for the fifth, sixth, tenth and eleventh causes of action against Defendants Minxing Wang and Dinggen Wang are not for sums certain and/or require determinations concerning apportionment of liability, and Plaintiffs shall be directed to an Inquest to determine damages as to those claims.¹

Plaintiffs also seek attorneys' fees. Claims for attorneys' fees "are not ordinarily amenable to characterization as claims for 'sums certain.'" *Arent Fox Kintner Plotkin & Kahn v. Lurzer GmbH*, 297 A.D.2d 590 (1st Dep't 2002); *Reynolds Secs. v. Underwriters Bank & Trust Co.*, 44 N.Y.2d 568 at 572 (1978) (holding that to be considered a "sum certain" there can be no dispute as to the amount due). Therefore, because attorneys' fees are not treated by courts as a sum certain, Plaintiffs shall be directed to an Inquest to determine the issue of attorneys' fees as against only Defendants Minxing Wang and Dinggen Wang.

Defendants may seek a vacatur of the instant default judgment if they can satisfy the requirements of CPLR § 5015, CPLR § 317, or any other relevant law.

Therefore it is:

ORDERED that Plaintiffs' Motion for a Default Judgment against Defendant Minxing Wang is Granted, and the Clerk of the Court is directed to enter a judgment in favor of Plaintiffs and against Defendant Minxing Wang for the amount alleged in the first and second causes of action in the complaint, \$51,000.00, with interest, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

¹ Plaintiffs have specifically requested an award only on claims one, two, three and four, with the remainder of the causes of actions to be sent to a JHO to hear and determine Plaintiffs' entitlement to additional monies.

ORDERED that Plaintiffs' Motion for a Default Judgment against Defendant Dinggen Wang is Granted, and the Clerk of the Court is directed to enter a judgment in favor of Plaintiffs and against Defendant Dinggen Wang for the amount alleged in the third and fourth causes of action in the complaint, \$112,000.00, with interest, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that Plaintiffs' request for damages as to the fifth, sixth, tenth and eleventh causes of action as against Defendants Minxing Wang and Dinggen Wang is referred to a Judicial Hearing Officer ("JHO") to hear and determine; and it is further

ORDERED that Plaintiffs' request for attorneys' fees as against Defendants Minxing Wang and Dinggen Wang is referred to a JHO to hear and determine; and it is further

ORDERED that a JHO or Special Referee shall be designated to determine the damages owed to Plaintiffs by Defendants Minxing Wang and Dinggen Wang, inclusive of attorneys' fees; 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 Plaintiffs' counsel shall serve a copy of this order with notice of entry on all Defendants within five days from the date of this Order and that counsel for Plaintiffs

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.

4/1/2019
DATE


Joel M. Cohen, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
	<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input checked="" type="checkbox"/> REFERENCE