

<b>Fora Fin. Advance, LLC. v L &amp; L Constr. Dev., Inc.</b>
2019 NY Slip Op 30875(U)
March 18, 2019
Supreme Court, New York County
Docket Number: 653089/2018
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

FORA FINANCIAL ADVANCE, LLC., Plaintiff, - v - L & L CONSTRUCTION DEVELOPMENT, INC., XIANGBO LI Defendant. INDEX NO. 653089/2018 MOTION DATE 12/21/2018 MOTION SEQ. NO. 001

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

were read on this motion for DEFAULT JUDGMENT

Upon the foregoing documents:

Plaintiff Fora Financial Advance, LLC moves for a default judgment pursuant to CPLR §3215 against Defendants L & L Construction Development, Inc. d/b/a L & L Construction Development, Inc. ("L & L Construction") and Xiangbo Li for failure to appear, answer, or otherwise move with respect to the complaint. For the reasons described below, the motion for default judgment is granted in part and denied in part. Plaintiff's claim for attorneys fees is referred to a J.H.O as against Defendant Xiangbo Li.

Both defendants have failed to appear, answer or otherwise move in this action. Nor did they submit opposition to the instant motion for a default judgment.

As against Defendant Xiangbo Li, Plaintiff has submitted un rebutted evidence demonstrating compliance with the requirements of CPLR §3215(g)(3). Therefore, Plaintiff is entitled to a default judgment in the amount of \$63,067.92 against Defendant Xiangbo Li.

Plaintiff also seeks 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, Plaintiff shall be directed to an Inquest to determine the issue of attorneys' fees as against Defendant Xiangbo Li.

As for Defendant L & L Construction, Plaintiff has failed to submit sufficient evidence demonstrating compliance with the additional mailing requirement of CPLR §3215(g)(4). (See NYSCEF 8). Therefore, Plaintiff is not entitled to a default judgment against L&L Construction.

Therefore it is:

**ORDERED** that Plaintiff's motion for a Default Judgment against Defendant Xiangbo Li is granted and the Clerk of the Court is directed to enter a judgment in favor of Plaintiff and against Defendant Xiangbo Li for the amount alleged in the complaint, \$63,067.92, together with judgment interest, costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

**ORDERED** Plaintiff's request for attorneys' fees is referred to a JHO to hear and determine; and it is further

**ORDERED** that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to determine the attorneys' fees owed to Plaintiff by Defendant Xiangbo Li; 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](http://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 Xiangbo Li within five days 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/ljd/supctmanh/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.

**ORDERED** that Plaintiff's motion for a Default Judgment against L & L Construction is Denied;

**ORDERED** that the Plaintiff shall file and serve this Order with Notice of Entry on all defendants within 5 days; it is further

**ORDERED** that Defendant L & L Construction is to file an Answer within 20 days after service of the Notice of Entry; and it is further

**ORDERED** that Plaintiff and Defendant L & L Construction are to appear for a Preliminary Conference on April 30, 2019 at 9:30 a.m.

This constitutes the Decision and Order of the Court.

3/18/2019  
DATE

  
JOEL M. COHEN, J.S.C.

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