

<b>Baybakov v Gorilovsky</b>
2019 NY Slip Op 32568(U)
August 29, 2019
Supreme Court, New York County
Docket Number: 652886/2018
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

-----X

OLEG BAYBAKOV

Plaintiff,

- v -

ARTHUR GORILOVSKY,

Defendant.

-----X

INDEX NO. 652886/2018

MOTION DATE N/A

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81

were read on this motion for DEFAULT JUDGMENT

Upon the foregoing documents:

Plaintiff Oleg Baybakov moves for a default judgment, pursuant to CPLR §3215, against Defendant Arthur Gorilovsky for failure to timely appear, answer, or otherwise move with respect to the complaint. For the reasons described below, the motion for default judgment is granted.

Defendant has not submitted any opposition to this motion.

Plaintiff has submitted un rebutted evidence demonstrating compliance with the requirements of CPLR §3215. Therefore, Plaintiff's motion for default judgment is granted as to liability. The relief sought in the Verified Complaint is for a sum certain of \$139,657.84, plus interest at a rate of 6% per year from January 1, 2016 through May 21, 2018, plus interest at a rate of 16% from May 22, 2018 until payment has been made in full, plus costs and disbursements. As such, Plaintiff's motion for default judgment is granted as to damages.

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.

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

**ORDERED** that Plaintiff's Motion for a Default Judgment against Defendant is Granted, and the Clerk of the Court is directed to enter a judgment in favor of Plaintiff and against Defendants for the amount alleged in the complaint, \$139,657.84, plus interest at a rate of 6% per year from January 1, 2016 through May 21, 2018, plus interest at a rate of 16% from May 22, 2018 until payment has been made in full, together with 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 Granted and is referred to a JHO to hear and determine; 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](mailto: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

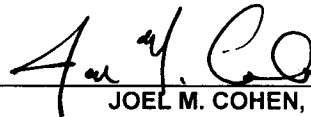
**ORDERED** that plaintiff's counsel shall serve a copy of this order with notice of entry on defendant within five days and that counsel for plaintiff shall, after thirty days from service of those papers, submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (which can be accessed at <http://www.nycourts.gov/courts/1jd/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.

This constitutes the Decision and Order of the Court.

8/29/2019  
DATE

  
JOEL M. COHEN, J.S.C.

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