

<b>Le Anfore LLC v R&amp;G 86 LLC</b>
2020 NY Slip Op 30314(U)
January 6, 2020
Supreme Court, New York County
Docket Number: 654953/2017
Judge: Melissa A. Crane
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MELISSA A. CRANE  
Justice  
HON. MELISSA CRANE

PART 15

LE ANFORE LLC,

- v -

R&G 86 LLC, REMO BIAMONTE, and  
AUGUSTO REITANO,

INDEX NO. 654953/2017  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 003  
MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered \_ to \_ were read on this motion to/for \_\_\_\_\_.

	PAPERS NUMBERED
Notice of Motion/Order to Show Cause — Affidavits — Exhibits ...	_____
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____

CROSS-MOTION: YES NO

Upon the foregoing papers, it is ordered that this motion is

Plaintiff, Le Anfore, LLC (“plaintiff”) moves to strike defendants’ answer, to preclude defendant from offering evidence at trial pursuant to CPLR 3126, and for a default judgment against defendants. Plaintiff argues that defendants have willfully failed to provide discovery or appear for depositions in this case.

On July 18, 2017, plaintiff commenced this action by filing a Summons and Complaint. On August 4, 2017, plaintiff served a copy of the summons and complaint on defendant R&G 86 LLC via the Secretary of the State of New York, pursuant to BCL 306, and on August 22, 2017, plaintiff served the summons and complaint on defendant Augusto Reitano. Finally, on October 21, 2017, plaintiff served the summons and complaint on defendant Remo Biamonte.

On May 14, 2018, plaintiff moved for a default judgment against defendants (motion sequence 001). It was only after plaintiff filed a default motion that defendants hired counsel.

On May 29, 2018, defendants filed an Answer with affirmative defenses. The parties then

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE REASON(S):

stipulated to withdraw the default motion, and plaintiff accepted defendant's May 29 Answer (see nyscef doc no 22). Subsequently, on June 6, 2018, plaintiff requested a preliminary conference. The court set a preliminary conference date of June 19, 2018. Defendants failed to appear at the court conference scheduled for June 19, 2018. Following the conference, the court issued a non-appearance order that scheduled another compliance conference for August 16, 2018 at 9:30am. The court stated in its order "that with regard to any named parties that fail to appear at that conference, a default judgment may be granted against them and/or their claims may be dismissed, pursuant to 22 NYCRR 202.27" (NYSCEF doc no 24). The court directed plaintiff to serve defendants with the non-appearance order.

On August 27, 2018, defendants appeared for the preliminary conference and the court set deadlines to complete discovery. The court set the Note of Issue date as January 23, 2019 and wrote that the "parties should meet and confer and then contact the court immediately thereafter" should discovery disputes arise. Both parties had until September 28, 2018 to respond to discovery demands. Plaintiff claims that defendants failed to respond to its demands by September 28, 2018. The court noted defendants failure to respond to demands at the next compliance conference on December 11, 2018. The court gave defendants an additional chance to respond by January 18, 2019.

Plaintiff states it did receive defendants discovery responses on January 4, 2019, but the responses were inadequate and barebones. Defendants never appeared for a deposition. On March 12, 2019, the court had another compliance conference. In its order, dated March 13, 2019, the court noted that defendants still have failed to produce responsive documents. The court directed plaintiff to file its Note of Issue on March 12, 2019.

Subsequently, the court granted defense counsel's motion to be relieved on June 6, 2019. The court did not set a future conference date because plaintiff had filed its Note of Issue. To the

court's knowledge, defendants still have not provided complete discovery to plaintiff, or appeared for a deposition. Defendants also did not oppose this motion. Therefore, the court strikes defendants' Answer and affirmative defenses.

Further, plaintiff demonstrates prima facie that it entered into a promissory note and personal guaranties with defendants, and that defendants failed to repay money pursuant to the note. Specifically, plaintiff delivered \$135,000 to defendants under the note. Defendants were to pay \$45,000 on or before August 11, 2015, \$45,000 on or before February 11, 2016, and \$45,000 on or before May 11, 2016. Defendants have only paid \$13,025 to plaintiff, thus leaving a balance owed of \$121,975.00.

Accordingly, it is

**ORDERED** that plaintiff's motion to strike the Answer and affirmative defenses of defendants, and for default judgment is granted without opposition; and it is further

**ORDERED** that the court strikes defendants' Answer and affirmative defenses; and it is further

**ORDERED** that the Clerk is directed to enter judgment in favor of plaintiff in the sum of \$121,975.00, with interest at the statutory rate of 9% from August 11, 2015 until entry of judgment, together with fees associated with the agreement in the amount of \$3,397.51, plus costs and disbursements, as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

**ORDERED** that the court denies plaintiff's request for attorneys' fees. Plaintiff has failed to make out its prima facie entitlement to attorneys' fees because it has failed to produce invoices, statements, or any documents demonstrating the amount of fees owed.

DATED: 1-6, 2020

  
MELISSA A. CRANE, J.S.C

**HON. MELISSA A. CRANE  
J.S.C.**

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate: MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER  
Check if appropriate:  DO NOT POST  REFERENCE  SETTLE ORDER  SUBMIT ORDER  
 FIDUCIARY APPOINTMENT