

**555 Tenth Ave. LLC v Zhenqiang Sun**

2020 NY Slip Op 31781(U)

June 5, 2020

Supreme Court, New York County

Docket Number: 151320/2020

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

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

*Justice*

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555 TENTH AVENUE LLC,

Plaintiff,

- v -

ZHENQIANG SUN and SULI JIANG

Defendants.

-----X

INDEX NO. 151320/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13

were read on this motion to/for DEFAULT JUDGMENT.

In this action to recover damages for breach of a lease, as well as for attorneys' fees and other costs and disbursements, plaintiff 555 Tenth Avenue LLC seeks an order, pursuant to CPLR 3215(a), directing that a default judgment be entered in its favor as against defendants Zhenqiang Sun and Suli Jiang due to their failure to answer or otherwise appear in this matter and, upon their default, directing that a judgment of \$25,769.35 be entered against them, together with statutory interest, costs and disbursements. After a review of the papers presented, as well as the relevant statutes and case law, the motion is granted without opposition.

On May 12, 2018, plaintiff, as landlord, entered into a lease with defendants, as tenants, for 555 Tenth Avenue, apartment 48F. Doc. 8. The term of the lease

was July 17, 2018 through July 16, 2019. Doc. 8. Aside from requiring defendants to make monthly rent payments by the 6<sup>th</sup> of every month or pay a \$150 late fee, the lease also required that they reimburse plaintiff for any legal fees or other expenses incurred by plaintiff as a result of any breach of the lease by defendants. Doc. 8.

When defendants failed to pay their rent for the months of January through April of 2019, plaintiff commenced a nonpayment proceeding against them in Civil Court, New York County under Index Number L & T 059914/19. Doc. 9. Defendants failed to appear in the nonpayment proceeding and, on July 19, 2019, a warrant of eviction and judgment of possession was awarded to plaintiff. Doc. 10.

Plaintiff subsequently commenced the captioned action by filing a summons and verified complaint against defendant on February 5, 2020. Doc. 1. Defendants were thereafter timely served with process. Doc. 7. Plaintiff also served defendants with an additional copy of the summons and complaint pursuant to CPLR 3215(g)(3). Doc. 7. As a first cause of action, plaintiff claimed that defendants breached their lease by failing to pay rent and, as a result, owed plaintiff \$25,769.35. Doc. 1. As a second cause of action, plaintiff claimed that defendants were obligated to reimburse it for all attorneys' fees, costs and disbursements it incurred as a result of defendants' breach of the lease. Doc. 1.

Defendants failed to answer or otherwise appear in this matter. Doc. 4.

Plaintiff now moves, pursuant to CPLR 3215(a), for a default judgment against defendants. In support of the motion, plaintiff submits an attorney affirmation; the affidavit of Stephanie Vera of Extell Management Services Inc. (“Extell”), managing agent for the premises, who attests that defendants owe plaintiff \$25,769.35; the lease; the petition and judgment from the Civil Court action; and a ledger generated by Extell establishing the amount owed by defendants.

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 a party moving for a default judgment pursuant to CPLR 3215 must establish proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the default in answering or appearing. *See Gantt v North Shore-LIJ Health Sys.*, 140 AD3d 418 (1<sup>st</sup> Dept 2016). Further, a default in answering the complaint is deemed to be an admission of all factual statements contained in the complaint and all reasonable inferences which flow from them. *See Woodson v Mendon Leasing Corp.*, 100 NY2d 62 (2003).

Plaintiff is entitled to a default judgment against defendant since it established proof of service of the summons and verified complaint, additional service of the summons and complaint pursuant to CPLR 3215(g)(3), defendant's failure to answer or otherwise move against the verified complaint, and the facts giving rise to the claim, as set forth in Vera's affidavit, the lease and the rent ledger. These documents establish that plaintiff is entitled to a default judgment against defendants in the amount of \$25,769.35 plus interest. Additionally, plaintiff is entitled to attorneys' fees, expenses, costs and disbursements incurred as a result of defendants' breach of the lease.

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

ORDERED that the motion by plaintiff 555 Tenth Avenue LLC for a default judgment against defendants Zhenqiang Sun and Suli Jiang, is granted in the amount of \$25,769.35, plus interest at the statutory rate from January 1, 2019, as well as costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs, and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that plaintiff shall serve a copy of this order, with notice of entry, on defendants, on the Clerk of the Court, and on the Trial Support Office; and it is further

ORDERED Plaintiff's request for expenses and 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 expenses and attorneys' fees owed to Plaintiff; 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 defendants 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 this constitutes the decision and order of the court.

6/5/2020

DATE

KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE