

<b>New Page Trust v Torati</b>
2020 NY Slip Op 32390(U)
July 21, 2020
Supreme Court, New York County
Docket Number: 653171/2019
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

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NEW PAGE TRUST and SHLOMO SELA INDIVIDUALLY
AND AS TRUSTEE OF NEW PAGE TRUST,

Plaintiffs,

INDEX NO. 653171/2019

MOTION DATE 11/27/2019

MOTION SEQ. NO. 001

- v -

HEZI TORATI and AAD PARTNERS, INC. D/B/A
AMEREVISION AND THE AAD GROUP, SKYGATE 010
LLC

Defendants.

DECISION + ORDER ON
MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 23, 24, 25, 26, 27,
28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 42, 43, 44, 45, 46, 47, 48

were read on this motion for

JUDGMENT - DEFAULT

ORDER

Upon the foregoing documents, it is

ORDERED that the plaintiffs' motion for a default judgment
is GRANTED; and it is further

ORDERED that defendants' cross-motion to vacate the default
is DENIED and an inquest for an assessment of damages against
the defendants is referred to a Special Referee to hear and
determine; and it is further

ORDERED that this matter having come on before this
court on November 27, 2019, on motion of the plaintiffs for
a default judgment and the plaintiffs having been represented in
connection therewith by Joseph Schwartz, Esq., the defendants Hezi
Torati, AAD Partners, Inc. and Skygate 010, LLC, having been

represented in connection therewith by William John Fallon, Esq., and the defendants Hezl Torati, AAD Partners, Inc. and Skygate 010, having defaulted in answering or otherwise appearing and, pursuant to CPLR 4317, the court having on its own motion determined to consider the appointment of a referee to determine as follows, the issue of damages separately triable and not requiring a trial by jury is involved, it is now hereby

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to determine the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

- (1) an assessment of damages on the first, second, fourth causes of action of the complaint against defendants Hezl Torati, AAD Partners, Inc. and Skygate 010, LLC; and
- (2) an assessment of damages on the fifth, sixth, and seventh causes of action of the complaint against defendants Hezl Torati, AAD Partners, Inc. and Skygate 010, LLC; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR unless otherwise indicated; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) 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 "References" link ), shall assign this matter at the initial appearance to an available JHO/Special Referee to determine as specified above; and it is further

ORDERED that counsel shall immediately consult one another, and counsel for plaintiffs shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail, with proof of service by regular first class mail upon defendants Bar 13, Inc. and Zoe Realty Corp. at each such corporate defendants last known address[es], an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the plaintiff, counsel for defendant Edwin Batiz, and the corporate defendants by regular first class mail to such corporate defendants' last known address[es], 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 parties, accompanied by their counsel, shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with

the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees 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(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules); and it is further

ORDERED and ADJUDGED that pursuant to CPLR 3215(b), the Clerk is directed to enter judgment in favor of plaintiffs and against the defendants Hezl Torati, AAD Partners, Inc. and Skygate 010, LLC, in accordance with the Report of the aforementioned Special Referee, without any further application.

#### DECISION

The parties executed two stipulations extending defendants' time to answer pursuant to which defendants waived the right to raise jurisdictional defenses. Defendants'

proffered excuses for the failure to timely submit an answer do not address the matter of such extensions, and therefore are not justifiable.

With respect to a meritorious defense, defendants' affidavit in opposition to the motion and in support of their cross-motion admits that the "sale never went through" but argues that plaintiff's damages are less than the offset of payments defendants made to plaintiff. This court concurs with plaintiffs that such factual allegations relate to a possible counterclaim, and since they are unrelated to the transaction at issue, do not constitute a meritorious defense as required by CPLR 5015(a)(1). See LePatner & Assoc. v Horowitz, '81 AD3d 472 (1<sup>st</sup> Dept. 2011).

On the other hand, plaintiffs have submitted proof of service of the summons and complaint upon defendants Hezi Torati, AAD Partners, Inc. and Skygate 010, LLC. Plaintiffs have further submitted a complaint, which constitutes an affidavit of facts, as plaintiffs verified such pleading.

Plaintiffs have also submitted proof of the additional mailings of the summons required by CPLR 3215(g)(4) by way of service of the instant motion, which is brought within one year of the default. Therefore, plaintiffs are entitled to a judgment of default.

07/21/2020

DATE

*Debra A. James*  
DEBRA A. JAMES, 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