

274 Madison Co. LLC v Growbright Enters., Inc.

2020 NY Slip Op 32935(U)

August 21, 2020

Supreme Court, New York County

Docket Number: 153562/2019

Judge: Margaret A. Chan

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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. MARGARET A. CHAN PART IAS MOTION 33EFM

Justice

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274 MADISON COMPANY LLC,

Plaintiff,

- v -

GROWBRIGHT ENTERPRISES, INC., BIZTRENDS, INC.,
JAYA SHUNMUGAVEL, GLOBAL BIZ INC, J.V. PANDIAN
HOLDINGS CORP.

Defendant.

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INDEX NO. 153562/2019
MOTION DATE 01/30/2020
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for JUDGMENT - DEFAULT.

In this nonpayment of rent matter, plaintiff 274 Madison Company LLC (274 Madison) moves for a default judgment against defendants Growbright Enterprises, Inc. (GEI), Biztrends Inc. (Biztrend), Global Biz Inc. (Global), J.V. Pandian Holdings Corp. (Pandian) (collectively, the corporate defendants), and Jaya Shunmugavel, pursuant to CPLR 3215 to recover damages from defendants' breach of their lease. The motion is unopposed. The Decision and Order is as follows:

BACKGROUND

Plaintiff is the owner and landlord of the building known as 274 Madison Avenue located in the city, county, and state of New York. Plaintiff alleges that it entered into a lease with GEI for Room 904 (the premises) in the building with an initial term from January 4, 2010 to December 31, 2012 (NYSCEF ## 13, 14). The lease was renewed multiple times – the latest of which was a four-year lease term starting on December 31, 2018 and ending on December 31, 2022 (NYSCEF # 15).

Plaintiff alleges that GEI breached the renewed lease by failing to pay rents and vacating the premises mid-lease. GEI had emailed plaintiff on March 28, 2019, stating that GEI would be vacating the premises on April 6, 2019, because it was unable to secure funds to make the rental payment (NYSCEF # 18). Adam Abramson, a member of plaintiff LLC, who oversees plaintiff's management of the building, including collection of rents and lease matters, avers that GEI abandoned

the premises at the beginning of April 2019 and owes plaintiff pre- and post-vacatur rents, utility charges, late fees, bounced check fees, and interest (NYSCEF # 11 – Abramson Aff). Plaintiff mitigated its damages by re-renting the premises on November 1, 2019 (NYSCEF # 10 – Pltf's Atty Aff in Support of Motion, ¶ 24). Thus, plaintiff seeks the pre- and post-vacatur rent, together with utility charges, late fees, and interest as liquidated damages in the amount of \$32,810.40 (NYSCEF # 27).

Plaintiff points out that GEI breached a February 12, 2019 stipulation of settlement from an earlier New York City Civil Court action that plaintiff brought against GEI for unpaid rents (NYSCEF # 17). Under the February 12, 2019 stipulation, plaintiff agreed not to execute on the warrant of eviction that was granted to plaintiff by the Civil Court if GEI timely made payments according to the stipulation's payment plan until the outstanding amount of \$11,848.71 through February 28, 2019 was satisfied (*id.*). Plaintiff alleges that defendants failed to make any payments.

Plaintiff contends that Biztrend, Global, and Pandian are also liable for GEI's monetary obligations because they are GEI's alter egos. Plaintiff explains that Shunmugavel is also the President of Biztrend, Global, and Pandian, which are also located at 274 Madison Avenue # 904, and these three companies have periodically paid rent on behalf of GEI (NYSCEF ## 11, 21, 26).

Therefore, on April 4, 2019, plaintiff filed this action seeking unpaid rent, additional rent, and damages totaling \$32,810.40 from GEI, as tenant, Shunmugavel, as guarantor, and the other corporate defendants as alter egos, based on GEI's failure to pay rent and additional rent due under the Lease¹ (NYSCEF ## 10, 12). Plaintiff served Shunmugavel via personal service on April 5, 2019 (NYSCEF # 23). Plaintiff served the corporate defendants through the New York Secretary of State on April 12, 2019 (NYSCEF # 25).

On April 16, 2019, Shunmugavel and plaintiff's counsel discussed settling this matter to no avail (NYSCEF # 10). The defendants did not answer or otherwise appear in this action, and their time to do so has not been extended (NYSCEF # 10). Plaintiff served Shunmugavel the notice of motion and memorandum of law in support of motion for default judgment by first-class mail on January 21, 2020 and served the corporate defendants through the New York Secretary of State on January 22, 2020 (NYSCEF ## 29, 30). Defendants have not responded to plaintiff's motion for a default judgment.

¹ Plaintiff does not make claims based on the breach of the stipulation.

DISCUSSION

CPLR 3215(f) requires a movant seeking default judgment to submit the following proofs: (1) proof of service of the summons and complaint or summons with notice; (2) an affidavit of the facts constituting the claim and the amount due, where a verified complaint has been served, it may be used as the affidavit of the facts constituting the claim and the amount due; and (3) an affidavit showing the default in answering or appearing.

Plaintiff submits proof of service on all the defendants: Plaintiff served Shunmugavel personally pursuant to CPLR § 308 on April 5, 2019, and the corporate defendants via the New York Secretary of State pursuant to CPLR § 311 and BCL § 306 on April 12, 2019 (NYSCEF ## 23, 25).

Additionally, plaintiff provides proof of the default – none of the defendants answered or appeared in this matter (NYSCEF # 10). There is no indication on the record of any appearance by any of the defendants.

Plaintiff has provided proof of its claims through its submission of the affidavit by Adam Abramson detailing the amounts of rent arrears and other outstanding utility and other charges, the parties' lease, and GEI's email indicating that defendants planned to vacate the premises on April 6, 2019, years ahead of the lease end-date of December 31, 2022. Abramson's affidavit further indicates that defendants failed to pay rent prior to their abandonment of the premises. Indeed, the Civil Court case indicates that rent has been due and owing for quite some time. Critically, plaintiff submits proof that Shunmugavel signed as the guarantor of the GEI lease. The guaranty obligates Shunmugavel to personally pay GEI obligations under the lease (NYSCEF # 16). As such, plaintiff has fulfilled the requirements of CPLR 3215(f).

However, additional notice is needed when a default judgment based upon nonappearance is sought (CPLR 3215[g]). While plaintiff properly served additional notice on Shunmugavel pursuant to CPLR 3215(g)(3)(i) by first-class mail on January 21, 2020, it did not do so on the corporate defendants pursuant to CPLR 3215(g)(4)(i). The affidavits of additional service show that plaintiff served the corporate defendants through the New York Secretary of State on January 22, 2020, instead of by first-class mail at the corporations' last known address. As such, the branch of plaintiff's motion for entry of default judgment against Shunmugavel is granted but denied as against the corporate defendants.

Accordingly, it is ORDERED that plaintiff's motion for default judgment against defendant Jaya Shunmugavel pursuant to CPLR 3215 is granted; defendant Jaya Shunmugavel is liable to plaintiff in the amount of \$ 32,810.40; it is further

ORDERED that plaintiff's motion for default judgment against defendants Growbright Enterprises, Inc., Biztrends Inc., Global Biz Inc., and J.V. Pandian Holdings Corp. pursuant to CPLR 3215 is denied without prejudice; it is further

ORDERED that plaintiff shall serve a copy of this order by first class mail with notice of entry upon all parties at their last known addresses within 15 days of entry and proof of service to be filed with the New York County Clerk within 15 days of said service; and it is further

ORDERED that the Clerk of the Court enter judgment as written.

This constitutes the Decision and Order of the court.

8/21/2020

DATE



MARGARET A. CHAN, J.S.C.

MARGARET A. CHAN, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	
<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
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CHECK IF APPROPRIATE:

<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN
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<input type="checkbox"/>	NON-FINAL DISPOSITION	
<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
<input type="checkbox"/>	SUBMIT ORDER	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE