

<b>Nowlan Ridge, LLC v Miles</b>
2021 NY Slip Op 32076(U)
October 12, 2021
Supreme Court, Broome County
Docket Number: EFCA2020000818
Judge: Eugene D. Faughnan
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At a Special Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District at the Broome County Courthouse, Binghamton, New York, on the 13<sup>th</sup> day of August 2021, on submission.

PRESENT: HON. EUGENE D. FAUGHNAN  
Justice Presiding

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF BROOME

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NOWLAN RIDGE, LLC c/o  
SALL ASSOCIATES LTD.,

Plaintiff,

DECISION, ORDER AND  
JUDGMENT

-against-

Index No. EFCA2020000818

JESSICA MILES and  
MATTHEW MILES,

Defendants.

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**EUGENE D. FAUGHNAN, J.S.C.**

This is an action to collect unpaid lot rent, lost rent and damages related to a mobile home. Per the Verified Complaint, Defendants vacated the residence in January 2020, so the action does not involve a claim for eviction or possession of the premises, but only damages. Defendants entered into a one-year lease agreement, dated November 1, 2017, for a mobile home on Nowlan Road in Binghamton, at a rate of \$695.00 per month. The lease was renewed on January 1, 2019 for another one-year term to expire on December 31, 2019, with a new rental rate of \$710.00 per month. A Summons with Verified Complaint was filed on March 19, 2020 and Plaintiff submitted affidavits of service indicating that both Defendants were served personally on April 27, 2020 at the subject premises, even though they allegedly vacated the

premises in January 2020. Plaintiff also submitted proof of the additional mailings required under CPLR § 3215. By Letter Decision and Order dated April 13, 2021, the Court granted default judgment on the issue of liability only. The Court also recognized that a defaulting Defendant “does not admit the plaintiff’s conclusion as to damages” and can still contest damages. *Rokina Optical Co. v. Camera King*, 63 NY2d 728, 730 (1984) (citation omitted). “Unless the damages sought in an action are for a ‘sum certain or for a sum which can by computation be made certain’ (CPLR 3215, subd [a]), judgment against a defaulting party may be entered only upon application to the court along with notice to the defaulting party and a full opportunity to cross-examine witnesses, give testimony and offer proof in mitigation of damages” *Rokina v. Camera King, Inc.*, 63 NY at 730 (internal quotation and citation omitted). Accordingly, the Court authorized the Plaintiff to submit written, admissible evidence in support of its claim for damages, and permitted Defendants to respond to those submissions. The Court also directed Plaintiff to serve a copy of the Order, with Notice of Entry, on Defendants by regular and certified mail by April 30, 2021.

Plaintiffs submitted a Certified Mail Receipt of service of the Order upon Defendant Jessica Miles, which was signed for by Defendant Matthew Miles at an address on Old State Road in Binghamton on April 29, 2021. Plaintiff also submitted proof of mailing on April 29, 2021 and a tracking number for service upon Defendant Matthew Miles.

The Court’s Letter Decision and Order directed Plaintiff to submit written statements, signed and sworn to by May 30, 2021. By further correspondence from Chambers, that time was extended to July 23, 2021 and Defendants were given until August 6, 2021 to submit any opposition.

On May 27, 2021, Plaintiff submitted an affidavit from Steven Carinci, managing member of the Plaintiff LLC, which attached Exhibits in support of the damages claimed. Plaintiff included a bill for flooring installation in the amount of \$812.01, which was paid by Plaintiff.<sup>1</sup> Carinci also referenced a cleaning bill from Erika Hartman, showing that the charges were actually less than those permitted under the lease. The payment to Ms. Hartman was \$424.25. In Plaintiff’s prior submission, bills and copies of checks were submitted for painting (\$886.00), repairs to door, ceilings and trim (\$2,800.00) and thermostat replacement (\$255.00).

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<sup>1</sup> Plaintiff acknowledges that the flooring quote was for \$815.00, and the actual cost was slightly less than that at \$812.01. Plaintiff only seeks damages in the amount of the actual cost incurred for flooring.

Plaintiff also submitted a payment ledger which appears to show an unpaid balance in excess of \$1,000 (even after deducting the security deposit), but Plaintiff is only seeking \$966.33 in unpaid rent. Plaintiff is also seeking one month of lost rent due to having to make the repairs prior to being able to rent the mobile home. Plaintiff also seeks attorneys fees of \$702.25 and costs and disbursements of \$710.00 and has submitted documentation supporting those claims. The lease permits recovery of reasonable attorneys fees (Page 9, ¶ XVII).

Plaintiff filed affidavits of service showing that the proof of damages was also served on Defendants on July 21, 2021 and July 22, 2021, within the time directed by the Court. No opposition was received from Defendants.

Plaintiff's evidence establishes the specific cleaning charges and damages to the apartment. It also includes an affidavit from a person with personal knowledge of the damage and payments made. The Defendants have not submitted anything to rebut the Plaintiff's proof. Upon review of the evidence submitted by Plaintiff, the Court concludes that Plaintiff has substantiated its claim for unpaid rent, loss of one month's rent and repair/cleaning fees. In addition, Plaintiff has also established its right to recover attorneys fees and costs and disbursements.

## CONCLUSION

Based on all the foregoing, it is hereby

**ORDERED**, that Plaintiff is entitled to judgment in the amount of \$6,853.57 plus attorneys fees of \$702.25, and costs and disbursements of \$710.00, for a total of \$8,265.82 and that Plaintiff have execution therefore.

THIS CONSTITUTES THE DECISION, ORDER AND JUDGMENT OF THIS COURT.

ENTER:

Dated: October 12, 2021  
Binghamton, New York



HON. EUGENE D. FAUGHNAN  
Supreme Court Justice