

979 Second Ave. LLC v Yue Wah Chao
2021 NY Slip Op 32800(U)
December 15, 2021
Supreme Court, New York County
Docket Number: Index No. 654145/2021
Judge: Erika M. Edwards
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ERIKA EDWARDS

PART 11

Justice

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INDEX NO. 654145/2021

979 SECOND AVENUE LLC,

MOTION DATE 09/20/2021

Plaintiff,

MOTION SEQ. NO. 001

- v -

YUE WAH CHAO A/K/A WINNIE CHAO,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16

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

Upon the foregoing documents, the court grants Plaintiff 979 Second Avenue LLC's ("Plaintiff") motion for a default judgment against Defendant Yue Wah Chao a/k/a Winnie Chao ("Defendant") without opposition.

Plaintiff is the owner of a building located at 979 Second Avenue, New York, New York and Plaintiff entered into a commercial lease agreement, dated October 12, 2011, with a tenant, Wah Win Group Corporation ("Tenant"), for a restaurant/food establishment, in which Defendant signed a guaranty. Plaintiff alleges in substance that the tenant and Defendant defaulted on the terms of the lease by failing to pay the rent, additional rent and other charges due and owing to Plaintiff.

Plaintiff further alleges in substance that Tenant defaulted, Plaintiff sued Tenant in the New York City Civil Court and Plaintiff and Tenant entered into a Stipulation of Settlement, dated December 13, 2019. Pursuant to the Stipulation, Tenant consented to a money judgment in the amount of \$133,429.79 for the amount due through December 31, 2019 and a judgment of

possession, but execution of the money judgment and warrant were stayed as long as Tenant complied with the payment terms for the arrears. Tenant defaulted on this agreement.

Plaintiff commenced this action by filing a summons and complaint on or about July 1, 2021. Plaintiff provided proof of service of the summons and complaint indicating that Defendant was properly served with the summons and complaint on July 14, 2021. To date, Defendant failed to answer or otherwise appear in this action and the time for Defendant to do so has long since passed.

Plaintiff now moves for a default judgment against Defendant in Plaintiff's favor and for a judgment in the sum certain amount of \$100,034.79 for rent, additional rent and charges due and owing and in the amount of \$5,097.83 for reasonable attorneys' fees, plus costs, disbursements and interest. Defendant failed to oppose the motion.

To obtain a default judgment, Plaintiff must establish four elements: 1) service of the summons and complaint; 2) Defendant's default; 3) the amount due; and 4) the facts constituting Plaintiff's claim (CPLR 3215[f]).

Courts have the discretion to determine what constitutes reasonable attorneys' fees. Courts have long considered the difficulty of the issues raised; the skill required to resolve them; the attorney's experience, ability and reputation; the time and labor expended; the amount and benefit resulting to the client from the services; and the customary fee charged for similar services (*Matter of Freeman*, 34 NY2d 1, 9 [1974]; *Navigators Ins. Co. v Sterling Infosystems, Inc.*, 2016 NY Misc LEXIS 1262, *3-4, 2016 NY Slip Op 30609[U] [Sup Ct, NY County 2016]).

The court finds that Plaintiff demonstrated its entitlement to the default judgment and money judgment in that Plaintiff demonstrated that Defendant was properly served with the summons and complaint and that the additional mailing required by CPLR 3215(g) was satisfied.

Additionally, Plaintiff demonstrated that Defendant failed to answer or otherwise appear in this action and the statutory time for Defendant to do so has long since passed.

Additionally, Plaintiff demonstrated that its claims against Defendant are meritorious. The evidence submitted demonstrates that Defendant owes Plaintiff \$100,034.79 for rent, additional rent and other costs pursuant to the terms of the lease agreement, the guaranty and Stipulation of Settlement and \$5,097.83 for reasonable attorneys' fees, plus costs, disbursements and interest. The court finds that such attorneys' fees and costs are reasonable.

As such, it is hereby

ORDERED that the court grants Plaintiff 979 Second Avenue LLC's motion for a default judgment against Defendant Yue Wah Chao a/k/a Winnie Chao; and it is further

ADJUDGED that the Clerk shall enter judgment by default in favor of Plaintiff 979 Second Avenue LLC as against Defendant Yue Wah Chao a/k/a Winnie Chao in the amount of \$100,034.79, plus \$5,097.83 for reasonable attorneys' fees, plus costs, disbursements and statutory interest at the rate of nine percent (9%) per annum from the date of entry of the judgment until the payment of judgment as calculated by the Clerk of the Court, plus costs and disbursements as taxed by the Clerk of the Court upon the submission of a proper bill of costs and Plaintiff shall have execution thereon; and it is further

ORDERED that within 10 days from entry of this decision and order, Plaintiff's counsel shall serve a copy of this decision and order with notice of entry upon Defendant.

This constitutes the decision and order of the court.

12/15/2021
DATE


ERIKA EDWARDS, 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