

Klee v First Capital Real Estate Advisors, LP

2021 NY Slip Op 32827(U)

December 29, 2021

Supreme Court, New York County

Docket Number: Index No. 652188/2020

Judge: Louis L. Nock

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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. LOUIS NOCK PART 38M

Justice

-----X

RICHARD KLEE,

Plaintiff,

- v -

FIRST CAPITAL REAL ESTATE ADVISORS, LP, FIRST CAPITAL MASTER ADVISOR, LLC, FC-REI GP, LLC, FIRST CAPITAL REAL ESTATE INVESTMENTS, LLC, SUNEET SINGAL, XYZ CORPORATIONS #1-5, JOHN DOES #1-5,

Defendant.

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INDEX NO. 652188/2020
MOTION DATE 11/16/2021
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for JUDGMENT - MONEY

Upon the foregoing documents, plaintiff's motion for entry of a default judgment is granted without opposition and for the reasons set forth in the motion, in accord with the attached order.

12/29/2021 DATE

[Handwritten Signature]
LOUIS NOCK, J.S.C.

CHECK ONE: [X] CASE DISPOSED [] DENIED [X] NON-FINAL DISPOSITION
[] GRANTED [] SETTLE ORDER [] SUBMIT ORDER [] OTHER
APPLICATION: [] INCLUDES TRANSFER/REASSIGN [] FIDUCIARY APPOINTMENT [] REFERENCE
CHECK IF APPROPRIATE:

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

----- X Hon. Louis L. Nock, J.S.C.

RICHARD KLEE,

Plaintiff,

Index No. 652188 / 2020

vs.

DECISION AND ORDER

FIRST CAPITAL REAL ESTATE
ADVISORS, LP, FIRST CAPITAL MASTER
ADVISOR, LLC, FC-REI GP, LLC, FIRST
CAPITAL REAL ESTATE INVESTMENTS,
LLC, SUNEET SINGAL, XYZ
CORPORATIONS #1-5, and JOHN DOES
#1-5,

Defendants.

(Motion Sequence No. 002)

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The following e-filed documents, listed by NYSCEF document number 5, 6, 7, 8, 9, 10, 11, 12, and 13 (Motion Seq. 001) were read on this motion to/for this motion for summary judgment and default judgment.

The following read on plaintiff’s motion for judgment in relation to allegedly unpaid wages of \$189,423.08 with causes of action for (i) breach of contract, (ii) violation of New York State Minimum Wage Law, (iii) unjust enrichment, (iv) *quantum meruit*, and (v) attorney’s fees.

A summons and complaint were filed on June 2, 2020. First Capital Master Advisor, LLC (“FCMA”) was served via Limited Liability Company Law 303 on September 1, 2020. (*See* Affirmation of Matthew Walters dated November 16, 2021 [the “Walters Aff.”]). First Capital Real Estate Advisors LP (“FCREA”) was served per Partnership Law 121-109 on September 1, 2020. (*See Id.*).

Notices of appearance for Suneet Singal (“Singal”) and FCREA have been filed. (*See* NYSCEF Doc. No. 3).

Plaintiff moves for a default judgment pursuant to CPLR § 3212 against FCMA. Although Plaintiff presents an affidavit of service demonstrating FCMA was served, (*see* Walters Aff., Ex. B), FCMA has not answered or otherwise appeared in this action and their time to do so has expired.

Plaintiff has submitted proof of compliance with the requirements set forth in CPLR § 3215(g)(3) and CPLR 3215(g)(4), (*see* Walters Aff., Ex. I), and an affidavit of service demonstrating that First Capital Master Advisor LLC were both served with a copy of this motion and supporting papers.

In support of its motion, Plaintiff has submitted an affidavit attesting that the allegations in the complaint are truthful and further describing Defendants’ liability. (*See* Affidavit of Richard Klee dated November 8, 2021 [the “Klee Aff.”]). According to Plaintiff, “[he] was employed by Defendants from October 15, 2018 until [he] resigned [his] position on November 29, 2019. As of the date of [his] resignation [he] was owed \$189,423.08 in compensation due to [him], including *inter alia* unpaid hourly wages and earned/vested bonuses plus 300 shares of stock.” (*See Id.* at ¶¶ 6-7). Plaintiff’s affidavit, based on his personal knowledge, constitutes admissible proof of the facts constituting his claim sufficient to grant a judgment in default against the non-appearing Defendant First Capital Master Advisors LLC. (*See Woodson v. Mendon Leasing Corp.*, 100 N.Y.2d 62, 70 [2003]).

This Court previously denied Plaintiff’s motion for a judgment in default against FCMA with leave to renew because Plaintiff had not supplied the Court with a copy of his employment agreement with FCMA (*see* Decision and Order of Hon. Louis L. Nock, J.S.C. dated October 4,

2021)(NYSCEF Doc. No. 16). Plaintiff now cured that deficiency by attaching a copy of his employment agreement to his affidavit in support of this motion.

Having established the statutory requisites, Plaintiff is entitled to a judgment in default and an inquest on damages as to the non-appearing Defendant FCMA.

As noted above, Singal and FCREA have appeared in this case. (*See* NYSCEF Doc. No. 3). In his affidavit, Plaintiff states that “[a]fter they were served with a copy of the summons and complaint, Defendants SUNEET SINGAL and FIRST CAPITAL REAL ESTATE ADVISORS, LP . . . entered into a settlement agreement whereby [Suneet] SINGAL and the [First Capital Real Estate] ADVISOR[s, LP] agreed to pay the sum of \$161,538 in settlement of the claims asserted in the Complaint against them (but not in settlement of any claims against the other Defendants). The Settlement Agreement provided that this Court would be the appropriate venue for the adjudication of claims arising out of the Settlement Agreement.” (*See* Klee Aff. at ¶¶ 16-22).

Plaintiff submits the fully-executed settlement agreement, (*see* Klee Aff., Ex. F), and the required Notice to Cure sent by his attorney. (*See* Walters Aff., Ex. H).

The Settlement Agreement provided that Singal and FCREA were required to pay \$115,174 on or before March 31, 2021 and, if they failed to do so, that the entire settlement sum of \$161,538 would accelerate and come due unless they timely cured their default. (*See* Settlement Agreement, Klee Aff., Ex. F at ¶¶ 13-14). The Settlement Agreement also provided that Plaintiff could recover attorneys’ fees, costs, and disbursements in the event of a default, including fees incurred in collecting attorneys’ fees (e.g., “fees on fees”). (*See Id.* at ¶ 21).

As set forth in Plaintiff’s affidavit, Defendants Singal and FCREA failed to make any payment under the settlement agreement and thereafter failed to cure their default despite being

sent the requisite notice to cure, as required by Paragraph 4(b) of the settlement agreement. (*See* NYSCEF Doc. No. 5 at ¶¶ 18-20).

Pursuant to CPLR § 3215(i)(1), after commencement of an action, if a stipulation of settlement is made for a sum certain and there is a subsequent failure to comply with the stipulation, plaintiff is entitled to judgment on the stipulation. Plaintiff has adequately demonstrated that to be the case here as to Defendants Singal and FCREA.

This Court previously denied Plaintiff's motion for a judgment in default against FCREA and Singal with leave to renew because Plaintiff – and not Plaintiff's attorney – submitted the requisite Notice to Cure when it was his attorney who had emailed it. (*See* Decision and Order of Hon. Louis L. Nock, J.S.C. dated October 4, 2021)(NYSCEF Doc. No. 16). Plaintiff's attorney now cured that deficiency by authenticating and attaching a copy of the emailed Notice to Cure to his affirmation.

As a result of the foregoing, Plaintiff's motion is granted and it is hereby

ORDERED that judgment in default is granted in favor of Plaintiff and against Defendant FCMA; and it is further

ORDERED that this matter is referred to a special referee and that an inquest shall be held before a special referee to hear, determine, and fix the quantum of damages due to Plaintiff from Defendant FCMA and that the special referee shall issue a report thereon; and it is further

ORDERED that judgment is granted in favor of Plaintiff and against Defendants Singal and FCREA for the sum of \$161,538; and it is further

ORDERED that this matter is referred to a special referee and that an inquest shall be held before the special referee to hear and determine the quantum of ^{Reasonable} attorneys' fees, costs, and disbursements (including "fees on fees") to be assessed against Defendants Singal and FCREA

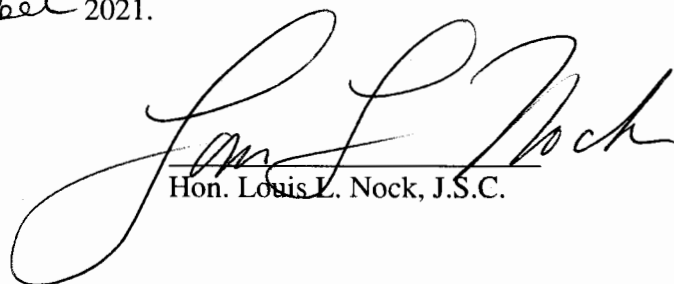
and to hear, determine, and fix the total amount of damages (\$161,538 plus the assessed attorneys' fees, costs, and disbursements) due to Plaintiff and that the special referee shall issue a report thereon; and it is further

ORDERED that the Clerk of the Court is directed to enter money judgments in favor of Plaintiff and against Defendants FCMA, FCREA, and Singal in accordance with the determination(s) and report(s) of the aforementioned special referee(s) without necessity of further application; and it is further

ORDERED that, within 14 days hereof, that Plaintiff shall serve a copy of this Order with Notice of Entry shall on Defendants by mailing a copy hereof the last known address of Defendant FCMA and by filing same on NYSCEF (which shall be deemed good service on Defendants Singal and FCREA); and it is further

ORDERED that Plaintiff shall cause a copy of this order, with notice of entry and proof of service as set forth hereinabove, to be filed with the Special Referee Clerk (Room 119M, 646-386-3028, or *spref@nycourts.gov*) to arrange a date for a reference to hold an inquest and determine and fix damages as set forth hereinabove pursuant to CPLR 4317.

SO ORDERED on this *20th* day of *December* 2021.



Hon. Louis L. Nock, J.S.C.

HON. LOUIS L. NOCK
J.S.C.