

Roosevelt Ave. Enters., LLC v Anflo Inc.

2022 NY Slip Op 30021(U)

January 2, 2022

Supreme Court, New York County

Docket Number: Index No. 650459/2020

Judge: Melissa A. Crane

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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. MELISSA CRANE PART 60M

Justice

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INDEX NO. 650459/2020

ROOSEVELT AVENUE ENTERPRISES, LLC,

MOTION DATE 10/27/2021

Plaintiff,

MOTION SEQ. NO. 003

- v -

ANFLO INC., ANGEL RUIZ, BRENDA FLORES

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50

were read on this motion to/for CONTEMPT.

On June 25, 2020, plaintiff moved, pursuant to CPLR 3215, for leave to enter a default judgment against defendants Angel Ruiz and Brenda Antonella Flores (NYSCEF Doc. Nos. 6-18). On December 29, 2020, the court denied, without prejudice, plaintiff's motion for leave to enter a default judgment against the defendants due to plaintiff's failure to submit proper nonmilitary affidavits in support of its motion (NYSCEF Doc. No. 19).

On February 17, 2021, plaintiff moved again, pursuant to CPLR 3215, for leave to enter a default judgment against defendants Angel Ruiz and Brenda Antonella Flores (NYSCEF Doc. Nos. 20-35). In its motion, plaintiff also withdrew its action as to corporate defendant Anflo Inc. ("Anflo"), noting that it had previously obtained a money judgment against Anflo, and that Anflo was no longer operating (NYSCEF Doc. No. 21, ¶ 33; NYSCEF Doc. No. 43 ¶ 7 [c]).

On July 8, 2021, the court granted plaintiff's motion for default judgment as against defendants Angel Ruiz and Brenda Antonella Flores and directed the clerk to enter judgment against the defendants, jointly and severally, in the sum of \$339,135.88, with interest at the

statutory rate of 9% per annum from August 15, 2019, together with costs and disbursements, as taxed by the clerk, upon the submission of an appropriate bill of costs (NYSCEF Doc. No. 36). The court also denied, without prejudice, plaintiff's request for attorneys' fees because plaintiff failed to submit proof of its entitlement to the same (*id.*).

On July 28, 2021, a judgment totaling \$399,423.76 was entered in favor of plaintiff and against the defendants Angel Ruiz and Brenda Antonella Flores (NYSCEF Doc. No. 39).

On August 6, 2021, plaintiff served a subpoena upon defendant Brenda Antonella Flores compelling her to appear for a deposition on September 9, 2021 (NYSCEF Doc. Nos. 42, 46-47). On August 18, 2021, plaintiff served a subpoena upon defendant Angel Ruiz compelling him to appear for a deposition on September 9, 2021 (NYSCEF Doc. Nos. 42, 44-45). To date, neither of the defendants have appeared for a deposition, and neither defendant opposes this motion.

Plaintiff now moves for an Order, pursuant to CPLR 5251 and Judiciary Law 753 (A) (5) and 756, declaring defendants Angel Ruiz and Brenda Antonella Flores in contempt of court for failing and refusing to appear for a post-judgment deposition on September 9, 2021, and also for an order, pursuant to Judiciary Law 773, for legal fees and costs incurred in this case.

In order to purge itself of the contempt, the defendants must either comply with the information subpoena (*see McNulty v McNulty*, 81 AD2d 581 [2d Dept 1981]; *H.D. Smith Wholesale Drug Co. v Custom LTC, LLC*, 2010 NY Slip Op 30373[U] [Sup Ct, NY County, Feb. 22, 2010] [Gische, J.]) or pay its obligation under the judgment within 60 days of service of this order upon it.

Accordingly, unless the defendants Angel Ruiz and Brenda Antonella Flores purge the contempt within 60 days of service of this order by complying with plaintiff's subpoena and appearing for a deposition, or by satisfying the judgment by paying \$399,423.76, plus statutory

interest from the date of entry of the judgment, the court imposes a fine of \$150.00 upon each of the defendants. However, plaintiff's request for legal fees and costs incurred in this case, pursuant to Judiciary Law 773, is denied because there is no proof in the record supporting that request.

Accordingly, it is

ORDERED that plaintiff's motion to hold defendants Angel Ruiz and Brenda Antonella Flores in contempt of court is granted, without opposition; and it is further,

ORDERED AND ADJUDGED, that the conduct of the defendants Angel Ruiz and Brenda Antonella Flores was willfully contemptuous of this court and was calculated to and actually did defeat, impair, impede, or prejudice the rights of the plaintiff inasmuch as defendants Angel Ruiz and Brenda Antonella Flores failed to comply with the subpoena served upon them; and it is further,

ORDERED that plaintiff shall serve a copy of this order with notice of entry upon the defendants Angel Ruiz and Brenda Antonella Flores, by Federal Express or Overnight Mail, within 10 days of the e-filed date of this order; and it is further,

ORDERED that, unless defendants Angel Ruiz and Brenda Antonella Flores purge themselves of this contempt within 60 days of service by complying with the plaintiff's information subpoena served upon them August 18, 2021 and August 6, 2021, respectively, or by satisfying the judgment by paying \$399,423.76, plus statutory interest from the date of entry of the judgment, they shall be fined \$150.00 each; and it is further

ORDERED that plaintiff's request for an award of legal fees and costs incurred is denied, without prejudice.

1/2/22
DATE

Melissa Crane
MELISSA CRANE, 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