

119 Third Fee Owner, LLC v Goris

2022 NY Slip Op 30137(U)

January 18, 2022

Supreme Court, New York County

Docket Number: 151828/2021

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 L. NOCK PART 38M

Justice

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119 THIRD FEE OWNER, LLC,
Plaintiff,

- v -

JASON GORIS,
Defendant.

INDEX NO. 151828/2021
MOTION DATE 09/03/2021
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15

were read on this motion for JUDGMENT - DEFAULT

Upon the foregoing documents, it is ordered that:

Plaintiff's motion for entry of a default judgment pursuant to CPLR 3215 is granted, on default and without opposition, based upon the following memorandum decision.

Background

In this action to recover unpaid rent, plaintiff 119 Third Fee Owner, LLC ("plaintiff") moves for entry of a default judgment against defendant Jason Goris ("defendant").

Plaintiff is the record owner of the building located at 181 East 119th Street (NYSCEF Doc. No. 5, ¶ 4). Defendant is the tenant of record of apartment 4-B in the building (the "premises") (id., ¶ 5; NYSCEF Doc. No. 6). Relevant to the instant motion, pursuant to a lease between the parties most recently renewed as of September 12, 2018, defendant was obligated to pay a fixed monthly rent of \$2,391.29 from October 1, 2018 through September 30, 2020 (id. at 1, ¶¶ 6-7). In addition, defendant agreed to pay a monthly electricity charge of \$100 (id. at 28), as well as a \$50 late fee on all rent payments received after the fifth day of the month in which it was due (id. at 10, ¶ 30[a]). In the event defendant defaulted under the lease by failing to pay

rent, defendant is obligated to reimburse plaintiff's attorney's fees resulting from the default (*id.* at 9, ¶ 29(d), as well as pay use and occupancy to plaintiff while remaining in the apartment (*id.*, ¶ 28(b).

Defendant remains in the premises (NYSCEF Doc. No. 5, ¶ 13). Plaintiff alleges that, as of August 31, 2021, defendant owes \$26,528.87 in unpaid rent, electric fees, and late fees (NYSCEF Doc. No. 5, ¶ 7), as attested to by plaintiff's rent ledger and electric bills attached to the moving papers (NYSCEF Docs. No. 8-9). In addition, plaintiff claims it has incurred \$6,104.49 in attorney's fees (NYSCEF Doc. No. 5, ¶ 10), as attested to by the invoices attached to the moving papers (NYSCEF Doc. No. 10). Plaintiff now moves for entry of a default judgment against defendant in the total amount of \$32,633.36.

Plaintiff commenced this action by filing a summons and complaint on February 23, 2021 (NYSCEF Doc. No. 1). An affidavit of service filed on March 16, 2021 attests to service on defendant on March 9, 2021 by delivery to a person of suitable age and discretion at the premises on March 8, 2021, and a subsequent mailing to defendant at the premises pursuant to CPLR 308(2) (NYSCEF Doc. No. 2). An affidavit of additional service filed with the moving papers attest to service by mail on defendant of the notice pursuant to CPLR 3215(g)(3) on August 17, 2021 (NYSCEF Doc. No. 14). To date, defendant has not answered the complaint or otherwise appeared in the action. There is no opposition to the motion.

Discussion

A plaintiff that seeks entry of a default judgment for a defendant's failure to answer must submit proof of service of the summons and complaint upon the defendant, proof of the facts constituting the claim, and proof of the defendant's default (CPLR 3215). "The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts" (*Feffer v Malpeso*,

210 AD2d 60, 61 [1st Dept 1994]). “[D]efaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them” (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). Nevertheless, “CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action” (*Guzetti v City of New York*, 32 AD3d 234, 235 [1st Dept 2006] [internal quotations and citations omitted]).

Here, plaintiff has met its burden on the motion by submission of the affidavit of service demonstrating service of the summons and complaint on defendant (NYSCEF Doc. No. 2), an affirmation of its counsel, Christina M. Browne, Esq., attesting to the default (NYSCEF Doc. No. 4, ¶¶ 10-11), the verified complaint (NYSCEF Doc. No. 1), and the affidavit of Joseph McKillop, plaintiff’s General Counsel, which attests to the facts constituting plaintiff’s claim (NYSCEF Doc. No. 5). In his affidavit, McKillop reaffirms the allegations of the verified complaint and attests to the amount owed. As set forth in the verified complaint, plaintiff leased the premises to defendant for a renewal term of two years, at a monthly fixed rent of \$2,391.29, as well as electric fees, late fees, and applicable attorney’s fees (NYSCEF Doc. No. 1, ¶¶ 6, 14; NYSCEF Doc. No. 6 at 1, 9-10, 28). As set forth in the verified complaint and confirmed in McKillop’s affidavit, Anani owes unpaid rent, electric fees, and late fees of \$26,528.87, and legal fees of \$6,104.49, a total amount \$32,633.36 (NYSCEF Doc. No. 1, ¶¶ 13-14; NYSCEF Doc. No. 5, ¶¶ 7-10; NYSCEF Doc. Nos. 8-10). Therefore, Plaintiff’s motion for entry of a default judgment against defendant is granted.

Accordingly, it is hereby

ORDERED that the motion is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff 119 Third Fee Owner, LLC. and against defendant Jason Goris in the sum of \$32,633.36, with interest at the statutory rate from February 23, 2021, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that, insofar as plaintiff seeks unpaid rent, use and occupancy, electric fees, late fees, or attorney’s fees that have accrued during the pendency of the motion, the issue of the amount of damages therefrom is severed, and within thirty (30) days of this order plaintiff is directed to e-file on NYSCEF, and email same to the Clerk of this Part at SFC-Part38-Clerk&nycourts.gov, and serve on defendant at his last known address documentation supporting the additional amount of rent and fees that has accrued prior to the court’s decision on this motion.

Louis L. Nock

<u>1/18/2022</u>			<u>LOUIS L. NOCK, J.S.C.</u>	
DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE