

Queenwood 34 LLC v Gloria Jewel Inc.

2022 NY Slip Op 30156(U)

January 19, 2022

Supreme Court, New York County

Docket Number: 150091/2021

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

-----X

QUEENWOOD 34 LLC,
Plaintiff,

- v -

GLORIA JEWEL INC. and MEGAN LEARY,
Defendants.

-----X

INDEX NO. 150091/2021
MOTION DATE 09/17/2021
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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

were read on this motion for JUDGMENT - DEFAULT

LOUIS L. NOCK, J.

Upon the foregoing documents, it is ordered that:

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

Background

In this action for breach of a commercial lease, plaintiff landlord moves for entry of a default judgment against defendant tenant, Gloria Jewel, Inc. ("Gloria Jewel"), and defendant guarantor, Megan Leary ("Leary").

Plaintiff leased the property located at 34 Leonard Street, New York, New York, a/k/a 180 West Broadway, New York, New York (the "premises"), to Gloria Jewel pursuant to a written lease (NYSCEF Doc. No. 6). Leary is the guarantor of Gloria Jewel's rent obligations pursuant to a limited written guaranty (NYSCEF Doc. No. 7), limited by the period during which Gloria Jewel occupied the premises. Plaintiff's manager, Steven Elghanayan, attests that,

although the lease term was to end February 28, 2023, Gloria Jewel vacated the premises in August 2020. Plaintiff sold the premises in March 2021.

Per the affidavit and rent ledger of Mr. Elghanayan, Gloria Jewel owes Rent totaling \$132,315.90 for the period of April 1, 2020, through February 28, 2021, which is comprised of (i) Fixed Rent totaling \$121,757.46 (calculated pursuant to Article 3 and Exhibit B of the Lease as \$11,068.86 for eleven months; (ii) Tenant's proportionate share (1.5% as defined by paragraph 5.01[b]) of real estate taxes calculated pursuant to Article 5 of the Lease for the period of July 1, 2020, through December 31, 2020, of \$10,441 and (iv) electric charges measured by sub-meter pursuant paragraph 14 of the Lease totaling \$116.75. As Mr. Elghanayan further attests, after application of the security deposit of \$27,000, the balance is \$105,315.90, as stated on plaintiff's rent ledger.

While the court credits the foregoing showings, there are gaps in plaintiff's claim. One such gap is the equivalency placed by plaintiff in both defendants vis-à-vis its request for a principal judgment, against both, for the rent arrears through February 28, 2021 – the day before the premises changed ownership. While that is legitimate as to Gloria Jewel, it is not as to Leary, because Leary only guaranteed Gloria Jewel's arrears up to the time of surrender, which is alleged as August 2020. Plaintiff does not submit a separate calculation for that more abbreviated period and, thus, this court cannot issue a default judgment against Leary in an amount coterminous with Gloria Jewel's more expansive obligation. A second gap lies in what ordinarily ought to be a must simpler exercise – citation to a clear and unambiguous legal fee provision in the lease. Although plaintiff's counsel cites the court to section 26.02 (b) of the lease for the premise that it is entitled to its legal fees incurred herein, that section makes mention of “the reasonable expenses of reletting” The instant case is not about reletting.

Plaintiff sold the premises effective March 2021, and this action seeks rent arrears up until that point in time. The cited provision (§ 26.02 [b]) does not appear to address an otherwise anticipated provision – clear and unambiguous in its articulation – for attorneys’ fees incurred as a prevailing party in litigation against the tenant and its guarantor. Absent such clarity, this court cannot grant a default judgment that would include fees.

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]). “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, to the extent it has, by submission of the affidavits of service demonstrating service of the summons and complaint on defendants; the affirmation of its counsel, Christina M. Browne, Esq., attesting to the default in responding to the complaint, and attesting to the required additional notice pursuant to CPLR 3215 (g); the verified complaint; and the affidavit of Steven Elghanayan, plaintiff’s manager, which attests to the arrears “for the period of April 1, 2020 through February 28, 2021” (NYSCEF Doc. No. 5 ¶ 9).

As noted, however, insufficient support has been submitted with regard to the limits of Leary’s limited guaranty obligations and with regard to entitlement to legal fees having nothing to do with a reletting of the premises.

Accordingly, it is hereby

ORDERED that the plaintiff’s motion for a default judgment is granted to the following extent; and, therefore, it is

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff Queenwood 34 LLC and against defendant Gloria Jewel, Inc., in the principal sum of \$105,315.90, representing the unpaid balance of rent and additional rent as of February 28, 2021, with interest accrued thereon at the statutory rate from February 28, 2021, and continuing to so accrue through the date of satisfaction of judgment; and it is further

ORDERED that said motion is otherwise denied.

This constitutes the decision and order of the court.

ENTER:

Louis L. Nock

<u>1/19/2022</u> DATE		<u>LOUIS L. NOCK, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE