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| Kasowitz Benson Torres LLP v Funsch |
| 2022 NY Slip Op 30163(U) |
| January 19, 2022 |
| Supreme Court, New York County |
| Docket Number: Index No. 155384/2021 |
| Judge: Louis L. Nock |
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LOUIS L. NOCK PART 38M

Justice

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KASOWITZ BENSON TORRES LLP,
Plaintiff,

- v -

KYLE FUNSCH,
Defendant.

-----X

INDEX NO. 155384/2021
MOTION DATE 09/24/2021
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 hereby ordered

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 legal fees, plaintiff Kasowitz Benson Torres LLP ("plaintiff") moves for entry of a default judgment against defendant Kyle Funsch ("defendant").

Defendant retained plaintiff to provide legal services and representation in connection with a partnership dispute pursuant to a retainer agreement dated December 29, 2015 (NYSCEF Doc. No. 7). Pursuant to the agreement, defendant agreed to pay an initial retainer of \$10,000.00, with additional services billed on a monthly basis and payable upon receipt (id.). Plaintiff provided legal services as set forth in the invoices attached to the moving papers; the final invoice dated November 23, 2020 states an outstanding balance of \$1,258,024.97 (NYSCEF

Doc. No. 8 at 1). Plaintiff states that defendant has failed to pay the outstanding balance (NYSCEF Doc. No. 4, ¶¶ 12-13), and now seeks entry of a default judgment in that amount.

Plaintiff commenced this action by filing a summons and complaint on June 3, 2021 (NYSCEF Doc. No. 1). An affidavit of service filed on June 15, 2021 attests to service on defendant on June 12, 2021 by service on a person of suitable age and discretion at defendant's residence, followed by a mailing of the summons and complaint to defendant at his residence pursuant to CPLR 308(2) (NYSCEF Doc. No. 2). Plaintiff's counsel attests to service by mail on defendant of the notice pursuant to CPLR 3215(g)(3) on July 29, 2021 (NYSCEF Doc. No. 4, ¶ 17), and has substantially complied with the statutory notice requirements (*Crespo v A.D.A. Mgt.*, 292 AD2d 5, 10 [1st Dept 2002]). 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. 6), an affirmation of its counsel, Joshua A. Seigel, Esq., attesting to the default and the facts constituting plaintiff's claim (NYSCEF Doc. No. 4, ¶¶ 5-14, 19), and the verified complaint (NYSCEF Doc. No. 1). In his affirmation, counsel reaffirms the allegations of the verified complaint and attests to the amount owed. As set forth in the verified complaint, defendant retained plaintiff to provide legal services and representation, and agreed to pay plaintiff's monthly bills as they came due, and that plaintiff provided such services without timely complaint or objection to its monthly bills (NYSCEF Doc. No. 1, ¶¶ 6-13; NYSCEF Doc. No. 7). As set forth in the verified complaint and confirmed in Seigel's affirmation, defendant owes unpaid legal fees of \$1,258,024.97 (NYSCEF Doc. No. 1, ¶ 14; NYSCEF Doc. No. 4, ¶¶ 8-14; NYSCEF Doc. No. 8 at 1). Therefore, Plaintiff's motion for entry of a default judgment against defendant is granted.

Accordingly, it is hereby

ORDERED that the motion is granted as set forth herein; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff Kasowitz Benson Torres LLP and against defendant Kyle Funsch in the sum of \$1,258,094.97, with interest at the statutory rate from November 23, 2020, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs.

This constitutes the Decision and Order of the Court.

ENTER:

Louis L. Nock

1/19/2022

DATE

LOUIS L. NOCK, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE