

50 W. Dev. LLC v 50 W. Apt. 46D, LLC

2022 NY Slip Op 30189(U)

January 18, 2022

Supreme Court, New York County

Docket Number: Index No. 651385/2021

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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50 WEST DEVELOPMENT LLC,
Plaintiff,

- v -

50 WEST APARTMENT 46D, LLC,
Defendant.

INDEX NO. 651385/2021
MOTION DATE 09/07/2021
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

were read on this motion for JUDGMENT - DEFAULT

LOUIS L. NOCK, J.

Plaintiff condominium sponsor commenced this action to enforce its rights under an Exchange Option Agreement dated September 19, 2017, by which defendant optionee transferred its tenancy-in-common ownership interest to Unit 46D of the subject condominium (50 West Street, New York, New York), to plaintiff, in exchange for plaintiff's transfer of its tenancy-in-common ownership interest to Unit 42C, to defendant. That agreement (exhibited by the complaint), at paragraph 10 addresses transfer taxes as follows:

The parties shall share in the Transfer Taxes associated with the Exchange as follows: (i) with respect to Unit 46D Optionee shall pay the New York State and New York City transfer taxes and Sponsor shall pay the New York Mansion Tax; (ii) with respect to Unit 42C Optionee shall pay the New York City transfer tax and Mansion tax and Sponsor shall pay the New York State transfer tax.

The complaint alleges that defendant has failed to satisfy its above-quoted transfer tax payment obligation to the tune of \$47,320.26 (see, Complaint ¶¶ 6-7). The complaint exhibits a New York City Finance Department Statement of Account dated November 6, 2020, showing said amount as due and payable on Unit 42C. The complaint essentially seeks an order of specific

performance compelling defendant to satisfy the transfer tax obligations on Unit 42C, or reimbursement of any such tax obligation paid by plaintiff. Plaintiff actually submits the affidavit of its co-manager, Robert Kantor (NYSCEF Doc. No. 8), attesting to a payment by plaintiff of \$50,714.35 on June 9, 2021, corroborated by documentary evidence exhibited by that affidavit (NYSCEF Doc. No. 9).

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 (NYSCEF Doc. No. 6), an affirmation of its counsel, Daniel Schwartzman, attesting to the default (NYSCEF Doc. No. 4), the verified complaint with exhibits (NYSCEF Doc. No. 1), and the affidavit of Robert Kantor, co-manager of the plaintiff, which attests to the facts constituting plaintiff's claim (NYSCEF Doc. Nos. 8, 9). Thus, plaintiff is entitled to a default judgment on its substantive claim.

Plaintiff also seeks an award of attorneys' fees based on paragraph 30 of the Exchange Option Agreement, titled "Costs of Enforcing and Defending Agreement." The provision is convoluted in its expression, as follows:

Each party shall be obligated to reimburse other party for any legal fees and disbursements incurred by a party in defending such party's rights under this Agreement or, in the event either party defaults under this Agreement beyond any applicable grace period, in canceling this Agreement or otherwise enforcing such party's obligations hereunder.

The intendment of which party is which ("Each party," "other party," "a party," "such party's," "either party," "such party's") is far from clear. Lack of clarity is also found in competing phrases ("defending" and "enforcing)." Despite the draftsmanship, however: the court is convinced that the intent of this clause is to afford the prevailing party in any lawsuit involving this agreement an award of its reasonable attorneys' fees (*see, e.g., Greater N.Y. Mut. Ins. Co. v Mutual Marine Office, Inc.*, 3 AD3d 44 [1st Dept 2003] [court is authorized to interpret contractual language so as to affirm the reasonable expectations of the parties and to give meaning to its terms, if possible]). Therefore, the plaintiff is entitled to an award of its reasonable attorneys' fees incurred herein. Plaintiff's counsel, however, provides no detail whatsoever regarding his terse assertion that "Plaintiff has incurred attorneys' fees in the amount of \$10,000.00 thus far, which fees were reasonably charged by me" (Affirmation of Daniel Schwartzman, Esq. [NYSCEF Doc. No. 4] ¶ 6). Accordingly, the issue of the amount of plaintiff's reasonable attorneys' fees will be referred for hearing and determination.

Accordingly, it is

ORDERED that plaintiff's motion for a default judgment is granted; and, therefore, it is

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff

50 West Development LLC and against defendant 50 West Apartment 46D, LLC, in the

principal sum of \$50,714.35, with interest accrued thereon at the statutory rate from June 9, 2021, and so continuing to accrue until the date of satisfaction of judgment; and it is further

ORDERED that plaintiff is entitled to its reasonable attorneys' fees incurred in this action in an amount to be heard and determined by a Judicial Hearing Officer ("JHO") or Special Referee at inquest; and, therefore, it is

ORDERED that the issue of such fees is severed and a JHO or Special Referee shall be designated to conduct an inquest and determine the amount of Plaintiff's said fees, which is hereby submitted to the JHO/Special Referee for such purpose; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to determine as specified above.

This constitutes the decision and order of the court. ENTER:



<u>1/18/2022</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 checked="" type="checkbox"/>	GRANTED	<input 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 checked="" type="checkbox"/> REFERENCE