

<b>78-14 Roosevelt LLC v YLC Adult Day Care Ctr., Inc.</b>
2022 NY Slip Op 30213(U)
January 18, 2022
Supreme Court, New York County
Docket Number: Index No. 652464/2021
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*

-----X

78-14 ROOSEVELT LLC,  
  
Plaintiff,

- v -

YLC ADULT DAY CARE CENTER, INC.,  
  
Defendant.

INDEX NO. 652464/2021  
MOTION DATE 09/07/2021  
MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

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, on default and without opposition, based upon the following memorandum decision.

**Background**

In this action for breach of a commercial lease, plaintiff 78-14 Roosevelt LLC (“plaintiff”) moves for entry of a default judgment against defendant YLC Adult Day Care Center, Inc. (“defendant”).

Plaintiff is the record owner of Unit B of the building located at 78-14 Roosevelt Avenue, Jackson Heights, New York (the “premises”) (NYSCEF Doc. No. 13). Defendant is the tenant of record of the premises (NYSCEF Doc. No. 12, Lease at 1). Relevant to the instant motion, pursuant to a lease between the parties dated March 20, 2018, defendant was obligated to pay a fixed monthly rent of \$12,500.00 from April 1, 2018 to March 31, 2019, \$12,875.00 from April 1, 2019 through March 31, 2020, and \$13,261.25 from April 1, 2020 through March 31, 2021

(*id.*, ¶ 43). In addition, defendant agreed to pay additional rent in the form of a proportionate share of real estate taxes, utilities fees, and the cost of insurance if plaintiff acquired it rather than defendant (*id.*, ¶¶ 45, 48, 49). 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.*, ¶¶ 18-19).

Defendant remains in the premises (NYSCEF Doc. No. 10, ¶ 10). Plaintiff alleges that, as of April 1, 2021, defendant owes \$161,415.92 in unpaid rent and additional rent (NYSCEF Doc. No. 5, ¶ 7), as attested to by plaintiff's notice of rent default attached to the moving papers (NYSCEF Doc. No. 10, ¶ 8; NYSCEF Doc. No. 12, Notice of Rent Default). In addition, plaintiff claims it has incurred attorney's fees, and defendant has continued to accrue rent and additional rent, as defendant has not paid rent since plaintiff served the rent default (NYSCEF Doc. No. 10, ¶ 10). Plaintiff now moves for entry of a default judgment against defendant in the amount of \$161,415.92 representing the rent and additional rent due as of April 1, 2021, and seeks an inquest on its damages stemming from rent and additional rent that has accrued subsequent to the commencement of this action.

Plaintiff commenced this action by filing a summons and complaint on April 13, 2021 (NYSCEF Doc. No. 1). An affidavit of service filed on April 22, 2021 attests to service on defendant on April 16, 2021 by service on the Secretary of State pursuant to Business Corporation Law § 306 (NYSCEF Doc. No. 6). An affidavit of additional service filed with the moving papers attests to service by mail on defendant of the notice pursuant to CPLR 3215(g)(4) on May 18, 2021 (NYSCEF Doc. No. 16). 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, Charles E. Boulbol, Esq., attesting to the default (NYSCEF Doc. No. 11, ¶ 13), the verified complaint (NYSCEF Doc. No. 2), and the affidavit of Jack Cohen, plaintiff's member, which attests to the facts constituting plaintiff's claim (NYSCEF Doc. No. 5). In his affidavit, Cohen 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 term of ten years, at a fixed monthly rent of \$12,500.00 from April 1, 2018 to March 31, 2019, \$12,875.00 from April 1, 2019 through March 31, 2020, and \$13,261.25 from April 1, 2020 through March 31, 2021, as well as additional rent in the form of a proportionate share of real estate taxes, utilities fees, the cost of insurance, and plaintiff's reasonable attorney's fees

(NYSCEF Doc. No. 2, ¶¶ 5-12; NYSCEF Doc. No. 12, Lease, ¶¶ 43, 45, 48, 49). As set forth in the verified complaint and confirmed in Cohen’s affidavit, defendant owes unpaid rent and additional rent of \$161,415.92, and subsequent rent and additional rent and legal fees to be determined at inquest (NYSCEF Doc. No. 2, ¶¶ 5-12; NYSCEF Doc. No. 10, ¶¶ 8, 13; NYSCEF Doc. No. 12, Notice of Rent Default). 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 on liability in favor of plaintiff 78-14 Roosevelt LLC. and against defendant YLC Adult Day Care Center, Inc., and in the sum of \$161,415.92, representing the unpaid balance of rent and additional rent as of April 1, 2021, with interest at the statutory rate from April 13, 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 the issue of damages stemming from defendant’s failure to pay rent and additional rent while this action has been pending, as well as plaintiff’s reasonable attorney’s fees, is to be determined by a Judicial Hearing Officer (“JHO”) or Special Referee; and it is further

ORDERED that the issue of such damages 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:

*Louis L. Nock*

1/18/2022			LOUIS L. NOCK, J.S.C.	
<b>DATE</b>				
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 checked="" type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	OTHER