

Soho Lofts NYC, LLC v Ferrer
2022 NY Slip Op 30435(U)
February 3, 2022
Supreme Court, New York County
Docket Number: Index No. 652305/2020
Judge: Dakota D. Ramseur
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAKOTA RAMSEUR

PART 34M

Justice

-----X

INDEX NO. 652305/2020

SOHO LOFTS NYC, LLC,

MOTION DATE 03/17/2021

Plaintiff,

MOTION SEQ. NO. 004

- v -

MICHELLE FERRER,

DECISION + ORDER ON
MOTION

Defendant.

-----X

MICHELLE FERRER

Third-Party

Index No. 595599/2020

Plaintiff,

-against-

APT212, INC., HOON ON CO., INC.

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 004) 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81

were read on this motion to/for

REARGUMENT/RECONSIDERATION

In this action for, among other things, damages for rental arrears, defendant/third-party plaintiff Michelle Ferrer (Ferrer), now moves pursuant to CPLR 2221 to reargue this court's February 17, 2021 decision and order, entered by another justice of this court, denying Ferrer's motion for a default judgment on her counterclaims against plaintiff, Soho Lofts NYC, LLC (Soho). The underlying decision denied Ferrer's motion as moot based on a stipulation withdrawing the motion

as against third-party defendant Hoon On Co., Inc. (Stipulation). The motion is unopposed. For the following reasons, Ferrer's motion for leave to reargue is granted, and upon reargument, the court grant's Ferrer's motion for a default judgment against Soho.

The Court initially notes that while another justice of this court decided the underlying motion, this matter was administratively reassigned to the undersigned justice, the justice now presiding in Part 34. Accordingly, the motion is properly before the undersigned justice (*see C & N Camera & Elecs., Inc. v Pub. Serv. Mut. Ins. Co.*, 210 AD2d 132, 133 [1st Dept 1994]).

CPLR 2221 (d) permits a party to move for leave to reargue a decision upon a showing that the court overlooked or misapprehended the law, but shall not include any matters of fact not offered on the prior motion (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992]; *Pezhman v Chanel Inc.*, 126 AD3d 497 [1st Dept 2015]).

“A motion for reargument is not designed to afford the unsuccessful

party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted” (*Matter of Setters v AI Props. And Devs. (USA) Corp.*, 139 AD3d 492 [1st Dept 2016]). Here, Ferrer correctly argues that the underlying decision overlooked the fact that the Stipulation did not withdraw the underlying motion as against Soho.

CPLR 3215(f) requires a movant seeking default judgment to submit the following proofs: (1) proof of service of the summons and complaint or summons with notice; (2) an affidavit of the facts constituting the claim, where a verified complaint has been served, it may be used as the affidavit of the facts constituting the claim; and (3) an affidavit showing the default in answering or appearing. “It is well established that to avoid entry of a default judgment upon a failure to appear or answer, a defendant is required to demonstrate both a justifiable excuse for the default and a meritorious defense” (*Young v Richards*, 26 AD3d 249, 250 [1st Dept 2006]; see *Gaulsh v Diefenbach PLLC*, 162 AD3d 585 [1st Dept 2018]).

Ferrer demonstrates her entitlement to a default judgment. Plaintiff commenced this action by e-filing the summons and complaint on June 6, 2020. On June 24, 2020, Ferrer answered the complaint and e-filed counterclaims against Soho, who has failed to reply to Ferrer’s counterclaims. Ferrer also submits her uncontroverted affidavit establishing the facts underpinning her counterclaims. As Soho has failed to oppose both the underlying motion and the instant motion to reargue, it fails to rebut Ferrer’s entitlement to a default judgment.

Accordingly, it is hereby

ORDERED that plaintiff’s motion to reargue the February 17, 2021 decision and order is granted, and upon reargument, plaintiff’s motions for a default judgment against Soho Lofts NYC LLC is granted, without opposition; and it is further


ORDERED that the Clerk of the Court is directed to enter judgment as to liability in favor of plaintiff against defendant Soho Lofts NYC LLC; and it is further

ORDERED that the taking of an inquest and assessment of damages against plaintiff Soho Lofts NYC LLC shall be conducted at the time of the trial or other disposition of the action against the remaining defendant; and it is further

ORDERED that plaintiff shall serve a copy of this decision and order upon all parties, with notice of entry, within ten (10) days of entry.

This constitutes the decision and order of the Court.

2/3/2022
DATE



DAKOTA RAMSEUR, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION OTHER
 GRANTED GRANTED IN PART