

979 Second Ave. LLC v Wah Win Group Corp.
2022 NY Slip Op 30879(U)
March 14, 2022
Supreme Court, New York County
Docket Number: Index No. 656493/2021
Judge: Lyle E. Frank
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK **PART** **11M**

Justice

-----X

979 SECOND AVENUE LLC,

Plaintiff,

- v -

WAH WIN GROUP CORP., JOHN AND JANE DOE, XYZ
CORP.

Defendant.

-----X

INDEX NO. 656493/2021

MOTION DATE 03/07/2022

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 49, 50, 51, 52, 53, 54, 55

were read on this motion to/for JUDGMENT - DEFAULT.

Upon the foregoing documents, plaintiff's motion for default is granted without opposition.

Plaintiff commenced this action seeking damages as a result of defendant's alleged breach of a commercial lease agreement. Plaintiff now moves pursuant to CPLR §3215, seeking a default judgment against defendant, Wah Win Group Corp., for its failure to answer in this action. In support of the motion, plaintiff refers to the filed proof of service of the amended summons and amended verified complaint as well as an affidavit of merit. There is no opposition filed.

An application for a default judgment must be supported by either an affidavit of facts made by one with personal knowledge of the facts surrounding the claim or a complaint verified by a person with actual knowledge of the facts surrounding the claim. *Zelnick v Biderman Industries U.S.A., Inc.*, 242 AD2d 227 [1st Dept 1997]; *Hazim v Winter*, 234 AD2d 422 [2d Dept 1996].

Plaintiff has demonstrated that on December 31, 2021, the summons and verified complaint was duly served upon defendant, Wah Win Group Corp.. To date, Wah Win Group Corp. has failed to answer, appear, or obtain an order from the court extending her time to do so, and the time to answer or otherwise appear has expired. Accordingly, it is hereby

ORDERED, that Plaintiff's Motion Seq. 003 is hereby granted in its entirety; and it is further

ADJUDGED that Defendants' leasehold rights in the Demised Premises are terminated; and it is further

ADJUDGED that Plaintiff 979 Second Avenue LLC, having an address at c/o Farhat Realty Management LLC, 236 West 26th Street, Suite 805, New York, New York 10001, is granted possession of the entire Demised Premises known the ground floor space a/k/a storefront and portion of the basement in the building known as and situated at 979 Second Avenue, New York, New York 10022; and it is further

ORDERED and ADJUDGED that the New York County Sheriff, upon receipt of a certified copy of this Order and Judgment of Ejectment and payment of the proper fees, remove and eject the Defendant Wah Win Group Corp., doing business as Deli & Pizza on 2nd Ave, from the Demised Premises, and any person or entity in possession under or through Defendant, and to place Plaintiff into immediate possession of the entire Demised Premises; and it is further

ORDERED and ADJUDGED that upon entry of this Order and Judgment of Ejectment Plaintiff may exercise all rights of ownership affecting the Demised Premises and proceed to dispossess Defendant from the Demised Premises and remove all of Defendants' property, possessions, equipment or fixtures from the Demised Premises; it is therefore

ORDERED, that the Sheriff of New York County shall forthwith cause to be served any required notices to Defendant prior to the removal and ejection of Defendant from the Demised Premises.

ORDERED, ADJUDGED AND DECREED that the Sheriff of New York County or any Deputy Sheriff of the New York County Sheriff's Office, shall forthwith proceed to eject Defendant and any person or entity in possession of the Demised Premises under or through Defendant, and place Plaintiff in possession of the entire Demised Premises; and it is further

ORDERED, ADJUDGED AND DECREED, that the Sheriff of the County of New York upon obtaining access and entry to the Demised Premises is authorized to board up and secure the entire Demised Premises, re-key and install locking devices at the direction of Plaintiff; and it is further

ORDERED, that the Sheriff of the County of New York shall forthwith place Plaintiff in full possession of the entire Demised Premises and deliver legal possession to Plaintiff and/or remove all of the Defendant's property, possessions, equipment or fixtures from the Demised Premises at the direction of Plaintiff; and it is further


ORDERED, that the Court shall retain jurisdiction of this action until Plaintiff has recovered possession of the entire Demised Premises by removing Defendant and all of Defendants' property, possessions, equipment or fixtures from the Demised Premises; and it is further

ORDERED, that the portion of Plaintiff's Motion Seq. 003 seeking a judgment against Defendant for the unpaid use and occupancy which has accrued since the entry of the U&O Order is granted; and it is further

ORDERED that an assessment of damages against defendant, Wah Win Group Corp., is directed, and it is further

ORDERED that a copy of this order with notice of entry be served by the movant upon the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who is directed, upon the filing of a note of issue and a certificate of readiness and the payment of proper fees, if any, to place this action on the appropriate trial calendar for the assessment hereinabove directed; and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

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3/14/2022
DATE

LYLE E. FRANK, J.S.C.

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
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	
			<input type="checkbox"/>	
			<input type="checkbox"/>	