

**Board of Mgrs. of 57 E. 73rd St. Condominium v  
Wright**

2022 NY Slip Op 30890(U)

March 16, 2022

Supreme Court, New York County

Docket Number: Index No. 157227/2020

Judge: Sabrina Kraus

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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. SABRINA KRAUS PART 57TR**

*Justice*

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BOARD OF MANAGERS OF 57 EAST 73RD STREET  
CONDOMINIUM,

Plaintiff,

INDEX NO. 157227/2020

MOTION DATE 03/01/2022

MOTION SEQ. NO. 002

- v -

JAMES WRIGHT, VIGLIANO ASSOCIATES, LTD, DAVID  
VIGLIANO, NEW YORK CITY DEPARTMENT OF  
FINANCE, JOHN DOES 1-200

Defendant.

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 36, 37, 38, 39,  
40, 41, 42, 43, 44, 46

were read on this motion to/for STRIKE PLEADINGS

**BACKGROUND**

Plaintiff commenced this action to foreclose upon a lien for unpaid common charges for the premises located at 57 East 73rd Street, New York New York 10021, Unit Nos. 1 and 2 (Subject Premises). The summons and complaint were filed on September 8, 2020. On October 8, 2020, defendants Vigliano Associates, LTD and David Vigliano appeared by counsel.

On January 30, 2021, defendant James Wright (Wright) appeared by counsel and filed an answer.

New York City Department of Finance (NYCDF) has failed to appear or file an answer and the time within which NYCDF may answer or otherwise move to respond to said complaint has expired and has not been extended.

**PENDING MOTION**

Plaintiff moves pursuant to CPLR § 3126(3), to strike defendant Wright's Verified Answer, for his repeated failure to comply with his discovery obligations and Court orders; and pursuant to CPLR § 3215, granting plaintiff a default judgment against Wright and against defendant NYCDF on the Verified Complaint's first cause of action to foreclose on a lien of common charges, and referring the matter to a Referee to compute pursuant to the New York Real Property Law on the Verified Complaint's second cause of action for breach of contract, and referring the matter to a Referee for an inquest on damages.

In the alternative, plaintiff seeks, pursuant to CPLR § 3126(2), an order precluding Wright from introducing any documents at trial or in connection with any summary judgment motion, and pursuant to CPLR §3103, issuing a protective order absolving plaintiff of any obligation to produce discovery unless and until plaintiff's proposed confidentiality stipulation and order is executed by Wright. Lastly, plaintiff moves, pursuant to CPLR §3217(b), for an order permitting plaintiff to discontinue this action as against defendants David Vigliano and Vigliano Associates Ltd.

On January 14, 2022, plaintiff filed a Notice of Discontinuance as to John Does 1-200.

On February 4, 2022, the court consolidated the instant action with a related action pending between the same parties, under Index 157229/2020.

On February 16, 2022, the parties contacted the court to withdraw the portion of plaintiff's motion seeking an order striking Wright's answer, as Wright had produced responsive documents. Plaintiff seeks only to proceed with the portion of the motion seeking a default judgment as against NYCDF, as well as an order discontinuing the action as against David Vigliano and Vigliano Associates Ltd.

Defendants Wright and Vigliano Associates, LTD and David Vigliano do not oppose the remainder of the motion, as such the motion to discontinue as to Vigliano Associates, LTD and David Vigliano is granted.

NYCDF has not appeared or submit opposition.

### **DISCUSSION**

CPLR § 3215(a) provides, in pertinent part, that “[w]hen a defendant has failed to appear, plead or proceed to trial... the plaintiff may seek a default judgment against [it].” “On a motion for leave to enter a default judgment pursuant to CPLR §3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party's default in answering or appearing.” *Atlantic Cas. Ins. Co. v RJNJ Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011).

NYCDF is in default, as it has failed to appear or answer the complaint. However, plaintiff fails to offer any proof that NYCDF has a lien on the Subject Premises. The complaint states, “[NYCDF] has or may have liens against the Property by virtue of unpaid business or other taxes which liens are subsequent and/or subordinate to the lien for common charges being foreclosed herein.”

In order to be awarded a default judgment, plaintiff is required to establish that there are in fact liens for which the court could hold NYCDF in default for not appearing or answering the complaint. If NYCDF has no liens on the Subject Premises, they are not a proper party to this action. Plaintiff may renew its application for a default on proof of a NYCDF lien on the Subject Premises.

**CONCLUSION**

Wherefore, it is hereby

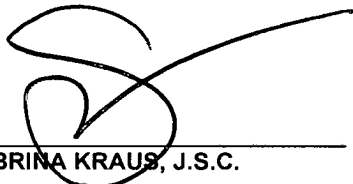
ORDERED that plaintiff's motion seeking a default judgment against New York City Department of Finance, is denied without prejudice; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on all defendants and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk 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](http://www.nycourts.gov/supctmanh)); and it is further

ORDERED that this constitutes the decision and order of the court.

3/16/2022  
DATE

  
SABRINA KRAUS, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE