

HPH Trio, LLC v Adonai Pharm. LLC

2022 NY Slip Op 31327(U)

April 19, 2022

Supreme Court, New York County

Docket Number: Index No. 653949/2021

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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HPH TRIO, LLC A/A/O ABJ TRIO, LLC,

Plaintiff,

- v -

ADONAI PHARMACY LLC and JUAN D. HIDALGO,

Defendants.

-----X

INDEX NO. 653949/2021

MOTION DATE 11/08/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

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

Upon the foregoing documents, it is hereby ordered that plaintiff's motion seeking entry of a default judgment pursuant to CPLR 3215 is granted, upon default and without opposition, based upon the following memorandum decision.

Background

In this action for breach of a commercial lease, plaintiff HPH Trio, LLC ("landlord") seeks entry of a default judgment against defendants Adonai Pharmacy LLC ("tenant") and Juan D. Hidalgo ("Hidalgo") arising out of tenant's early departure from the leased premises and the unpaid rent for the time before landlord was able to relet the space, and Hidalgo's guarantee of tenant's obligations under the lease.

Landlord is the record owner of the building located at 3 W. 137th Street (NYSCEF Doc. No. 7). Pursuant to a Standard Form of Store Lease dated November 27, 2017, landlord's predecessor-in-title leased the ground floor east store in the building (the "premises") to tenant for a term of ten years (NYSCEF Doc. No. 8). During the time relevant to the complaint, the fixed monthly rent for the premises was \$3,016.00 from December 2019 through November

2020, and \$3,136.64 from December 2020 through February 2021, plus late fees of 5% for any fixed monthly rent not timely paid (*id.*, ¶ 40). In addition, tenant agreed to pay 50% of any real estate tax escalation on a quarterly basis, all water charges, and a 5% late fee for any payments thereof not timely made (*id.*, ¶¶ 40-41, 46). In addition, Hidalgo agreed to guarantee “the full and faithful keeping, performance and observance” of tenant’s obligations under the lease (NYSCEF Doc. No. 9). If tenant defaulted in the payment of rent or additional rent, tenant remained obligated for the payment thereof until the lease expired, landlord dispossessed tenant by summary proceeding, or landlord re-entered the premises (NYSCEF Doc. No. 8, ¶ 18). In addition, landlord could relet the premises (*id.*, ¶ 18[b]).

Landlord asserts that tenant stopped paying rent after landlord purchased the building on December 20, 2019 and did not make further consistent payments until they vacated the premises on February 1, 2021 (NYSCEF Doc. No. 6, ¶¶ 13-15; NYSCEF Doc. No. 10). Landlord relet the premises on February 5, 2021 (NYSCEF Doc. No. 6, ¶ 17). According to landlord, tenant has an outstanding balance of \$45,857.28, representing the fixed monthly rent from February 2020 through January 31, 2021, plus pro-rated rent for February 2021, late fees, real estate tax escalations, and water charges (NYSCEF Doc. No. 6, ¶ 18; NYSCEF Doc. No. 10).

Landlord commenced this action by filing the summons and complaint on June 22, 2021 (NYSCEF Doc. No. 1). Affidavits of service filed on July 1, 2021 and July 14, 2021 attest to service on tenant via the Secretary of State pursuant to Limited Liability Company Law § 303 on June 30, 2021 and on Hidalgo by affixing the summons, verified complaint, and notice of electronic filing to the door of his residence, with a follow-up mailing on July 9, 2021 pursuant to CPLR 308(4), respectively (NYSCEF Doc. Nos. 2-3). An affirmation of additional mailing filed November 8, 2021 attests to service pursuant to CPLR 3215(g) on July 14, 2021 (NYSCEF

Doc. No. 15). To date, defendants have 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, landlord has met its burden on the motion by submission of the affidavits of service demonstrating service of the summons and complaint on tenant and Akiva (NYSCEF Doc. Nos. 2-3), the verified complaint (NYSCEF Doc. No. 1), the affirmation of its counsel, Peter J. Oliveri, Esq., attesting to the default (NYSCEF Doc. No. 5, ¶¶ 16-19), and the affidavit of Avi Plonka, tenant’s managing agent, which attests to the facts constituting plaintiff’s claims (NYSCEF Doc. No. 6). As set forth in the lease and Plonka’s affidavit, tenant is obligated under the lease to pay fixed monthly rent, additional rent in the form of a proportionate share of real estate taxes, water charges, and late charges as applicable under the lease (NYSCEF Doc. No. 6, ¶¶ 9-11; NYSCEF Doc No. 8, ¶¶ 40-41, 46). Further, Hidalgo entered into a personal guaranty

of tenant’s payment obligations under the lease (NYSCEF Doc. No. 6, ¶ 12; NYSCEF Doc. No. 9). As set forth in the verified complaint and confirmed in Plonka’s affidavit and the accompanying documents, tenant owes unpaid fixed monthly rent and additional rent of \$45,857.28 (NYSCEF Doc. No. 6, ¶ 18; NYSCEF Doc No. 10).

Accordingly, it is hereby

ORDERED that the motion is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff HPH Trio, LLC and against defendants Adonai Pharmacy LLC and Juan D. Hidalgo, jointly and severally, in the sum of \$45,857.28, with interest at the statutory rate from February 1, 2020, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs.

This constitutes the Decision and Order of the Court.



<u>4/19/2022</u>			<u>LOUIS L. NOCK, J.S.C.</u>	
DATE				
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input 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 type="checkbox"/>	REFERENCE