

Stanziale v Perlson
2022 NY Slip Op 31528(U)
May 10, 2022
Supreme Court, New York County
Docket Number: Index No. 656506/2021
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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BENJAMIN A. STANZIALE, JR. in his CAPACITY as
CHAPTER 7 TRUSTEE OF PROJECT LAUNDRY OPCO
LLC DBA FAIRWAY LAUNDRY,

Plaintiff,

- v -

CORY PERLSON, BRIANNA EHLAND, CCAG
INVESTMENTS LLC, DANIELLE UNIFORM
MAINTENANCE INC., DANIELLE UNIFORMS INC.,
CARNEGIE VALET CLEANING CORP., DANIELLE
LINEN, INC., and GOTHAM CLEANERS, INC.,

Defendants.

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INDEX NO. 656506/2021

MOTION DATE _____

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60

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

In motion sequence number 002, plaintiff Benjamin A. Stanziale, in his capacity as Chapter 7 Trustee of Project Laundry OPCO LLC d/b/a Fairway Laundry, moves, pursuant to CPLR 3215, for a default judgment on its fifth and sixth causes of action (fraudulent conveyance) against defendant Danielle Uniforms Inc. and for a default judgment on its seventh cause of action (conversion) against Danielle Uniform Maintenance Inc. There is no opposition to this motion.

“On a motion for a default judgment under CPLR 3215 based upon a failure to answer the complaint, a plaintiff demonstrates entitlement to a default judgment against a defendant by submitting: (1) proof of service of the summons and complaint; (2) proof of the facts constituting its claim; and (3) proof of the defendant's default in answering or

appearing.” (*Medina v Sheng Hui Realty LLC*, 2018 WL 2136441, *6-7 [Sup Ct, NY County 2018] [citations omitted].)

Proof of Facts Constituting Plaintiff’s Claim

A “judgment can only be entered upon submission of the requisite proof. Such proof must include proof by affidavit made by the party of the facts constituting the claim, the default and the amount due. Where a verified complaint has been served it may be used as the affidavit of the facts constituting the claim and the amount due.” (*Chase Manhattan Bank (N.A.) v Evergreen Steel Corp.*, 91 AD2d 539, 539 [1st Dept 1982] [internal quotation marks and citations omitted].) Where plaintiff’s counsel has personal knowledge of the facts constituting the action, a complaint verified by counsel is typically a sufficient affidavit of merits to support a 3215 motion. (*State Farm Mutual Auto. Ins. Co. v Rodriguez*, 12 AD3d 662, 663 [2d Dept 2004] [citations omitted].) However, counsel must “set forth the basis of counsel’s personal knowledge of the facts asserted therein.” (*A.B. Med. Servs. PLLC v Travelers Prop. Cas. Corp.*, 6 Misc 3d 53, 54 [App Term 2004] [citations omitted].) Further, when the allegations supporting the claim are solely on upon information and belief, the default motion shall be denied. (*Zelnik v Bidermann Indus. U.S.A.*, 242 AD2d 227, 228 [1st Dept 1997].)

Here, the complaint, which ultimately seeks to enforce a judgment in an underlying action, is verified by plaintiff’s counsel, who affirms that “I have read the foregoing Complaint and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe to be true. The reason this verification is made by me and not by plaintiff is that the plaintiff lacks personal knowledge of the contents

thereof.” (NYSCEF 2, Verified Complaint at 37.) While the court does not doubt that plaintiff’s counsel has personal knowledge of some of the facts based on his involvement in the underlying action, many of the allegations are upon information and belief or are conclusory.

For example, plaintiff alleges, upon information and belief that

“Carnegie Valet and Danielle Linen forwarded to the Customers the Project Laundry Customer Invoices underneath, or as itemized backup to, an invoice in the same amount but in the name of Carnegie Valet or Danielle Linen, directing the Customers to pay Carnegie Valet or Danielle Linen (‘Carnegie/Danielle Customer Invoice’).

In addition, upon information and belief, and unbeknownst to Project Laundry at the time, Danielle Maintenance and/or Carnegie Valet or Danielle Linen forwarded to Mevram [an intermediary company that serviced certain hotel customers including Staybridge, Mondrian Park, Holiday Inn (Brooklyn), Hotel Henri, Hotel Hayden and the Hendricks] the Project Laundry Customer Invoices, directing Mevram to pay Danielle Maintenance for services Project Laundry provided to Mevram’s hotel customers.”

(*Id.* ¶¶ 46, 47.) These allegations are in direct relation to plaintiff’s claim for conversion against Danielle Uniform Maintenance Inc. Further, the bank statements submitted evidencing payments by Mevram to Danielle Uniform Maintenance are not enough to show Danielle Maintenance directed Mevram to pay it instead of Project Laundry. (NYSCEF 59, Sterling Bank Statements.) All the bank statements show is that Danielle Uniform Maintenance received some payments from Mevram, but not that those payments were moneys to be paid to Project Laundry instead. Thus, the court cannot grant a default judgment on that claim. (*Zelnik*, 242 AD2d at 228.)

As to the claims for fraudulent conveyance against Danielle Uniforms Inc., plaintiff’s allegations are supported by bank statements evidencing transfers from Danielle Linen, Inc. and Carnegie Valet Cleaning Corp. to Danielle Uniforms Inc. during

the pendency of the underlying action. (See NYSCEF 56 and 58, TD Bank Statements.) This evidence, coupled with the allegations that these transfers were without fair consideration (see *id.* ¶¶ 190, 200), is enough proof of facts constituting plaintiff's claims for fraudulent conveyance against Danielle Uniforms Inc. (*Silberstein v Presbyterian Hosp. in NY*, 96 AD2d 1096, 1096 [2d Dept 1983] ["a default admits all factual allegations of the complaint and all reasonable inferences therefrom"]; 1-21 Weinstein-Korn-Miller, CPLR Manual § 21.09 ["When the defendant defaults, all the factual allegations of the complaint, and the reasonable inferences to be drawn from them, are considered admitted insofar as they relate to liability."].)

Proof of Service and Proof of Default

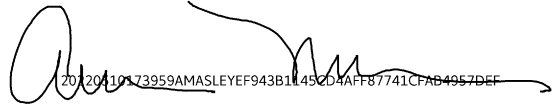
Plaintiff has submitted proof that Danielle Uniforms Inc. was served with the summons and verified complaint (NYSCEF 54, Affidavit of Service; NYSCEF 55, Affidavit of Additional Mailings.) Further, plaintiff's counsel affirms that Danielle Uniforms Inc. has failed to answer the verified complaint. (NYSCEF 312, Strassberg aff ¶ 4.)

Accordingly, it is

ORDERED that plaintiff's motion for a default judgment is granted, in part, as to defendant Danielle Uniforms Inc.; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendant Danielle Uniforms Inc. in the amount of \$ 2,684,700.90 (\$1,177,700.90 + \$1,507,000.00 [amount of transfers]) together with interest at the rate of 9% per annum from the date of August 21, 2021 until the date of the decision and order on this motion, and thereafter at the statutory rate, as calculated by the Clerk,

together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.



5/10/2022

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE