

City of New York v Styles
2022 NY Slip Op 32729(U)
August 12, 2022
Supreme Court, New York County
Docket Number: Index No. 450448/2022
Judge: William Perry
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. WILLIAM PERRY PART 23

Justice

-----X

CITY OF NEW YORK

Plaintiff,

- v -

JESSICA STYLES,

Defendant.

-----X

INDEX NO. 450448/2022

MOTION DATE 07/21/2022

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, 15

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

In this action seeking to enforce three monetary penalties imposed by the Environmental Control Board (ECB), plaintiff City of New York moves, pursuant to CPLR 3215, for a default judgment against defendant Jessica Ann Styles. The motion is supported by copies of the summons and complaint, affidavits of service and plaintiff’s affidavit. On June 21, 2022, plaintiff and defendant, through counsel, filed a stipulation adjourning plaintiff’s motion to July 21, 2022 (NYSCEF Doc No. 15). As of that date, no opposition has been filed, and the motion has been fully submitted.

Background

This action stems from defendant’s failure to pay three monetary penalties assessed against her by plaintiff. According to the verified complaint, the New York City Department of Buildings (DOB) issued three summonses, nos. 039024561J, 039024568M and 039024563N, dated June 25, 2020 to defendant, directing her to appear before the New York City Office of Administrative Trials and Hearings (OATH) for a hearing on October 28, 2020 (NYSCEF Doc No. 5, Marc J. Gross [Gross] affirmation, Ex A, ¶¶ 2, 6, 8, and 10). Defendant failed to appear

(*id.*, ¶ 12), and ECB adopted OATH’s decisions dated November 4, 2020 to impose a \$70,000 penalty against defendant for each summons (*id.*, ¶ 7, 9 and 11). Plaintiff commenced this action to enforce the penalties, which have not been paid. Plaintiff now moves for a default judgment.

Discussion

A motion for a default judgment must be supported with “proof of service of the summons and complaint[,] ... proof of the facts constituting the claim, [and] the default” (CPLR 3215 [f]; *see also Gordon Law Firm, P.C. v Premier DNA Corp.*, 205 AD3d 416, 416 [1st Dept 2022]). “[A] complaint verified by someone or an affidavit executed by a party with personal knowledge of the merits of the claim” satisfies this statutory requirement (*Beltre v Babu*, 32 AD3d 722, 723 [1st Dept 2006]; *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003] [stating that “the affidavit or verified complaint need only allege enough facts to enable a court to determine that a viable cause of action exists”]). The plaintiff must also offer “some proof of liability ... to satisfy the court as to the prima facie validity of the uncontested cause of action” (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). “The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts” (*id.*). A party in default “admits all traversable allegations in the complaint, including the basic allegation of liability, but does not admit the plaintiff’s conclusion as to damage” (*Rokina Opt. Co. v Camera King*, 63 NY2d 728, 730 [1984]).

The affidavit of service sworn to on February 14, 2022 reflects that plaintiff served defendant with process pursuant to CPLR 308 (2) by delivering the summons, complaint and notice of electronic filing to “Co-Tenant” Carl Doe as a person of suitable age and discretion, at defendant’s dwelling house and usual place of abode at 1134 Herkimer St., Brooklyn, New York 11223 on February 11, 2022 and by mailing same to that address on February 14, 2022

(NYSCEF Doc No. 8, Gross affirmation, Ex B). Plaintiff filed the affidavit of service with the court on February 18, 2021 (NYSCEF Doc No. 3), rendering service complete 10 days thereafter (*see* CPLR 308 [2]). A non-military affirmation from counsel states that on May 23, 2022, he performed a search on the Department of Defense Manpower Data Center using defendant's legal name and date of birth or social security address and learned that defendant is not currently on active military duty (NYSCEF Doc No. 9, Gross affirmation, Ex E, ¶ 2). Plaintiff has established that defendant has not timely answered or otherwise appeared (*see* CPLR 320) and has moved for an extension of time to do so (*see* CPLR 3012).

Plaintiff has also demonstrated its compliance with CPLR 3215 (g) (3) by showing that additional service of the summons was made to defendant's Brooklyn address by mail on May 6, 2022 (NYSCEF Doc No. 7, Gross affirmation, Ex C).


Turning to the merits, New York City Charter § 1049-a (d) (3) provides, in relevant part, that "[t]he environmental control board may apply to a court of competent jurisdiction for enforcement of any other decision or order issued by such board." Anayansi Cervera (Cervera), a supervisor in the Penalty Processing Unit at OATH, avers that OATH's records contain executed affidavits of service attesting to service of the three summonses, above, and directing defendant to appear for a hearing (NYSCEF Doc No. 8, Gross affirmation, Ex D, ¶¶ 1 and 3). The violations, copies of which are attached to Cervera's affidavit, relate to defendant's conversion of the premises located at 1134 Herkimer Street, Brooklyn from a two-family dwelling into seven apartments (*id.* at 4-6). The ECB's final decisions and orders, annexed to the affidavit, were served upon defendant by regular first-class mail at her Brooklyn address (*id.*, ¶ 5). A "daily affidavit of mailing" shows that ECB mailed each decision to defendant by first

class mail on November 5, 2020 (*id.* at 13-17). Plaintiff has satisfied its burden of tendering proof of the facts constituting the claim.

Accordingly, it is

ORDERED that plaintiff City of New York’s motion sequence number 001 for a default judgment against defendant Jessica Ann Styles is granted, without opposition; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff City of New York and against defendant Jessica Ann Styles in the sum of \$210,000.00, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs.

<u>8/12/2022</u>		
DATE		WILLIAM PERRY, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<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