

505 W. 37 LLC v Cooperstein
2022 NY Slip Op 33570(U)
October 18, 2022
Supreme Court, New York County
Docket Number: Index No. 157831/2021
Judge: Mary V. Rosado
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO

PART

33M

Justice

505 WEST 37 LLC

Plaintiff,

- v -

ADAM ARI COOPERSTEIN,

Defendant.

INDEX NO. 157831/2021

MOTION DATE 01/04/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19

were read on this motion to/for

JUDGMENT - DEFAULT

Upon the foregoing documents, and there being no opposition, Plaintiff 505 West 37 LLC's ("Landlord") motion for default judgment against Defendant Adam Ari Cooperstein ("Tenant") is granted.

This action arises out of a lease agreement between Landlord and Tenant (NYSCEF Doc. 1 at ¶ 4). Allegedly, Tenant failed to pay rent and additional rent from December 2019 through August 2021 (id. at ¶ 7). As such, Landlord initiated this action by filing a summons and complaint on August 20, 2021 (id.). Landlord alleges three causes of action (1) breach of contract for rent arrears; (2) breach of contract for rent arrears which may accrues during the course of this action, and (3) attorneys' fees. Tenant was personally served on September 8, 2021 (NYSCEF Doc. 2). Tenant did not file an Answer, so Landlord moved for default judgment on December 31, 2021 (NYSCEF Doc. 3). Landlord also moves to amend the Complaint to include rent and additional rent that has become due and owing since the filing of the Complaint (id.)

On January 14, 2022, Mr. Myron Winiarsky, Esq. ("Mr. Winiarsky") filed a notice of appearance on behalf of Tenant (NYSCEF Doc. 17). On January 31, 2022, Mr. Winiarsky wrote a

letter to the Court requesting an adjournment of the motion for default judgment until February 28, 2022 (NYSCEF Doc. 18). In the meantime, this case was transferred to Part 33. Upon being transferred, this part issued an interim order with an updated briefing schedule to allow Tenant to file opposition (NYSCEF Doc. 19). However, despite being given an opportunity to file opposition, Tenant failed to do so.

Leave to amend pleadings is freely granted in the absence of prejudice if the proposed amendment is not palpably insufficient as a matter of law (*Mashinsky v Drescher*, 188 AD3d 465 [1st Dept 2020]). A party opposing a motion to amend must demonstrate that it would be substantially prejudiced by the amendment, or the amendments are patently devoid of merit (*Greenburgh Eleven Union Free School Dist. V National Union Fire Ins. Co.*, 298 AD2d 180, 181 [1st Dept 2002]). Delay alone is not sufficient to deny leave to amend (*Johnson v Montefiore Medical Center*, 203 AD3d 462 [1st Dept 2022]).

An applicant for default judgment against a defendant must submit: (i) proof of service of the summons and complaint, (ii) proof of the facts constituting the claim, and (iii) proof of the defaulter's failure to appear (*PV Holding Corp v AB Quality Health Supply Corp*, 189 AD3d 645 [1st Dept 2020]). Affidavits submitted in support of default judgment only need to allege enough facts to allow a court to assess if a viable cause of action exists (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). The Court is mindful that "defaulters are deemed to have admitted all factual allegations in the complaint and all reasonable inferences that flow from them (*Al Fayed v Barak*, 39 AD3d 371, 372 [1st Dept 2007]).

As leave to amend is freely given, and Tenant has not opposed this motion, Landlord is granted leave to amend the Complaint to include rent and additional rent that has become due and owing since the filing of the Complaint. Moreover, Landlord has satisfied the notice requirements

of CPLR 3215 (NYSCEF Docs. 2, 11, 14). Additionally, Landlord has filed in support of its motion for default judgment a non-military investigative affidavit with a status report (NYSCEF Doc. 13). Further, Landlord has submitted sufficient proof of facts constituting its claim by showing the leases, a rent ledger, and including the affidavit of Joseph Dass, the authorized agent of Plaintiff (NYSCEF Docs. 5-8). Finally, as Tenant was given multiple opportunities to file an opposition to this motion but has failed to do so, and has not filed any Answer, the Court finds it appropriate to award default judgment in favor of Landlord.

Accordingly, it is hereby

ORDERED that Plaintiff 505 West 37 LLC's Complaint is amended to reflect further rental arrears that have accrued during the pendency of this action; and it is further

ORDERED that Plaintiff 505 West 37 LLC's motion for default judgment against Defendant Adam Ari Cooperstein is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of Plaintiff 505 West 37 LLC on its first and second causes of action against Defendant Adam Ari Cooperstein for rent and additional rent arrears that have accrued from January 2020 through December 2021 in the amount of \$69,405.00, plus statutory interest, from the date of this decision and order until entry of judgment, as calculated by the Clerk of the Court; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of Plaintiff 505 West 37 LLC on its third cause of action seeking attorneys' fees against Defendant Adam Ari Cooperstein in the sum certain amount of \$2,172.28, plus statutory interest, from the date of this decision and order until entry of judgment, as calculated by the Clerk of the Court; and it is further

ORDERED that within 30 days of entry of this decision and order, Plaintiff 505 West 37 LLC shall serve a copy of this decision and order with notice of entry upon Defendant Adam Ari Cooperstein.

This constitutes the decision and order of the Court.

10/18/2022

DATE

Mary V Rosado

HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE