

APF 286 Mad LLC v Hale & Hearty Soups L.L.C.

2022 NY Slip Op 33593(U)

October 19, 2022

Supreme Court, New York County

Docket Number: Index No. 154102/2022

Judge: Paul A. Goetz

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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. PAUL A. GOETZ PART 47

Justice

-----X

APF 286 MAD LLC, GAN 286 MADISON LLC, and 286 MADISON ASSOCIATES LLC,

Plaintiffs,

- v -

HALE & HEARTY SOUPS L.L.C.,

Defendant.

-----X

INDEX NO. 154102/2022

MOTION DATE 07/15/2022

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, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to/for JUDGMENT - DEFAULT

In this action to recover the amount owed under a commercial lease pursuant to a guarantee, plaintiffs APF 286 Mad LLC, GAN 286 Madison LLC and 286 Madison Associates, LLC (collectively, plaintiffs) move, pursuant to CPLR 3215, for a default judgment against defendant Hale & Hearty Soups L.L.C. for its failure to timely answer or appear in this action.

An application 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]). An affidavit of service sworn to May 13, 2022 shows that plaintiffs served defendant with process pursuant to Limited Liability Company Law § 303 by delivering duplicate copies of the summons and complaint and notice of electronic filing to the Secretary of State on May 13, 2022 (NY St Cts Elec Filing [NYSCEF] Doc No. 8, Jay B. Solomon [Solomon] affirmation, Ex B). Plaintiffs have established that defendant has not timely answered or appeared in this action or sought an extension of time to do so. Plaintiffs have also furnished proof that on May 19, 2022, they served defendant with an additional copy of the summons by first class mail together with a

notice that defendant had been served with process via the Secretary of State (NYSCEF Doc No. 9, Solomon affirmation, Ex C).

The verified complaint and the affidavit of plaintiffs' property manager, Marvia Wedderburn (Wedderburn) are sufficient to demonstrate the merits of the first cause of action for breach of contract based on a written guarantee. Plaintiffs' proof establishes that plaintiffs, as landlords, leased a portion of the ground floor at 286 Madison Avenue, New York, New York to nonparty 40th Street Soups, LLC, d/b/a Hale & Hearty Soups (Tenant) for a 15-year term commencing September 15, 2009 (NYSCEF Doc No. 5, Wedderburn aff, ¶ 6). Defendant, as Tenant's parent or guarantor, executed a written guarantee dated September 10, 2009 (the Guarantee) under which defendant unconditionally guaranteed Tenant's obligations of paying fixed and additional rent (NYSCEF Doc No. 10, Wedderburn aff, Ex D at 66). Plaintiffs have established Tenant's default in paying fixed and additional rent, and that defendant has breached its obligations under the Guarantee by failing to pay the outstanding amounts (NYSCEF Doc No. 5, ¶¶ 25-35). Although plaintiffs seek prejudgment interest from April 1, 2020, interest began to accrue from March 31, 2022, the last date Tenant could cure its default in accordance with Article 4 of the First Amendment of Lease dated October 21, 2020 (NYSCEF Doc No. 11, Wedderburn aff, Ex E at 2; NYSCEF Doc No. 12, Wedderburn aff, Ex F).

In addition to the unpaid rent and additional rent, plaintiffs are entitled to recover their "reasonable out-of-pocket and expenses incurred by Landlord in connection with the enforcement of the Lease or this Guarantee, including, without limitation, reasonable attorneys' fees" from defendant (NYSCEF Doc No. 10 at 67; *W6 Facility X, LLC v West 6 Care Ctr., Inc.*, 169 AD3d 968, 969-970 [2d Dept 2019] [granting judgment on liability on a cause of action to recover attorneys' fees against a guarantor]). In considering the reasonableness of the fee, the

court must consider the “time and labor required, the difficulty of the questions involved, and the skill required to handle the problems presented; the lawyer’s experience, ability and reputation; the amount involved and benefit resulting to the client from the services; the customary fee charged by the Bar for similar services; the contingency or certainty of compensation; the results obtained; and the responsibility involved” (*Matter of Freeman*, 34 NY2d 1, 9 [1974]). Plaintiff’s proof as to the amount it seeks consists of an attorney affirmation and two-page spreadsheet, is sufficient.

Accordingly, it is

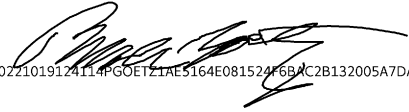
ORDERED that the part of the motion by plaintiffs APF 286 Mad LLC, GAN 286 Madison LLC and 286 Madison Associates, LLC for a default judgment against defendant Hale & Hearty Soups L.L.C. on the first cause of action (motion sequence no. 001) is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment against defendant Hale & Hearty Soups L.L.C. on the first cause of action in the amount of \$441,899.76, together with prejudgment interest from March 31, 2022 until the date of entry of judgment and at the statutory rate thereafter, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the part of plaintiffs’ motion for a default judgment against defendant Hale & Hearty Soups L.L.C. on the second cause of action is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment against defendant Hale & Hearty Soups L.L.C. on the second cause of action in the amount of \$16,873.00, together

with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs.


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10/19/2022
DATE

PAUL A. GOETZ, 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