

15 W. 43rd St. LLC v Princeton Club of N.Y.
2022 NY Slip Op 33791(U)
November 3, 2022
Supreme Court, New York County
Docket Number: Index No. 850118/2022
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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15 WEST 43RD STREET LLC,	INDEX NO. <u>850118/2022</u>
Plaintiff,	MOTION DATE _____
- v -	MOTION SEQ. NO. <u>002</u>
THE PRINCETON CLUB OF NEW YORK, THE CRIMINAL COURT OF THE CITY OF NEW YORK, NOUVEAU ELEVATOR INDUSTRIES LLC, and A-1 EXPERT INSTALLATION, INC.,	DECISION + ORDER ON MOTION
Defendants.	

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85

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

In motion sequence number 002, plaintiff 15 West 43rd Street LLC (Lender) moves (1) for summary judgment on its complaint against defendant Nouveau Elevator Industries LLC (Nouveau); (2) to sever Nouveau's cross claims pursuant to CPLR 603; (3) for a default judgment against defendants the Princeton Club of New York (Borrower), the Criminal Court of the City of New York (NYC Criminal Court) and A-1 Expert Installation, Inc. (A-1) pursuant to CPLR 3215; and (4) to appoint a Referee to compute and report the amount due and owing to the Lender pursuant to RPAPL 1321.

On June 7, 2022, Lender commenced this foreclosure action against Borrower, Nouveau and A-1, which both have mechanic's liens against the mortgaged property, and the NYC Criminal Court, which is a judgment creditor of Borrower. (NYSCEF 2, Complaint.) On June 28, 2022, counsel for Borrower filed a Notice of Appearance after entering into a stipulation with Lender to appoint a Rent Receiver (NYSCEF 63, Notice

of Appearance; NYSCEF 62, Stipulation.) Borrower did not file an answer and did not oppose this motion.

On July 12, 2022, counsel for A-1 filed a Notice of Appearance. (NYSCEF 64, Notice of Appearance.) A-1 did not file an answer and did not oppose this motion. On August 30, 2022, Nouveau filed an answer with cross claims to foreclosure on Nouveau's mechanic's liens against the Borrower. (NYSCEF 73, Answer with Cross Claims.) Nouveau has not opposed this motion. The NYC Criminal has not appeared in this action.

Default Judgment Against Borrower, A-1, and NYC Criminal Court

"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].) When the complaint is not verified, "CPLR 3215 (f) requires that an applicant for a default judgment file proof by affidavit made by the [moving] party of the facts constituting the claim." (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70 [2003].)

NYC Criminal Court

CPLR 312 provides, in relevant part, "[p]ersonal service upon a court consisting of three or more judges may be made by delivering the summons to any one of them." On June 13, 2022, Lender served the NYC Criminal Court by delivering a copy of the summons and complaint with exhibits to 100 Centre Street, NY, NY 10007 and leaving

these documents with a person who identified herself as a court assistant. This method of service is not in compliance with CPLR 312, and the Lender fails to provide any law to support its method of service. Thus, this motion is denied as to the NYC Criminal Court, and the complaint dismissed against it.

A-1 and Borrower

Lender provides sufficient proof of service of the summons and complaint on defendants A-1 and Borrower. (NYSCEF 56, A-1 Affidavit of Service; NYSCEF 84, A-1 Notice of Appearance; NYSCEF 57, Affidavit of Service of OSC for Appointment Rent Receiver and Pleadings; NYSCEF 83, Borrower's Acknowledgement of Service.) It is clear from the record that A-1 and Borrower have not answered the complaint. (See also NYSCEF 78, Weslock Aff ¶ 6 [affirming that Borrower did not answer].)

"Where, as here, a foreclosure complaint is not verified, CPLR 3215(f) states, among other things, that upon any application for a judgment by default, proof of the facts constituting the claim, the default, and the amount due are to be set forth in an affidavit made by the party." (*HSBC Bank USA, N.A. v Thorne*, 189 AD3d 1191, 1194-1195 [2d Dept 2020] [internal quotation marks and citation omitted].) In support of its application, Lender submits the affidavit of its representative, Rudolph Nemeth, who details the Borrower's defaults under the First and Second Lien Documents in support of its claims for foreclosure and the amounts due to Lender so far as the results of the defaults.

Thus, the default motion is granted, in part, as to defendants A-1 and Borrower.

Summary Judgment Motion Against Nouveau

Lender asserts that Nouveau's interest is junior to that of the Lender's mortgage, and that the Lender may foreclose Nouveau's interest in the mortgaged property. Nouveau does not oppose and asserted no affirmative defenses in its Answer with Cross Claims. Thus, summary judgment is granted in favor of Lender.

As to Nouveau's cross claims against Borrower, these claims are severed. The court notes that Borrower has not answered the cross claims, and thus, directs Nouveau to move for a default, if so advised, or discontinue these cross claims by December 2, 2022. A failure to do so will result in dismissal.

Appointment of Referee

As Lender has established the default in answering by A-1 and Borrower and summary judgment as to Nouveau, it is entitled to an order appointing a referee to compute amounts due pursuant to RPAPL 1321.

Accordingly, it is

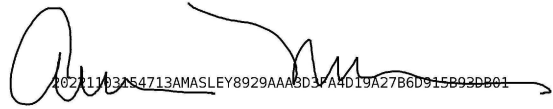
ORDERED that plaintiff's motion for summary judgment against defendant Nouveau Elevator Industries LLC is granted; and it is further

ORDERED that plaintiff's motion for a default judgment against defendants the Princeton Club of New York and A-1 Expert Installation, Inc. is granted; and it is further

ORDERED that plaintiff's motion for a default judgment against the Criminal Court of the City of New York is denied and its claims against the Criminal Court of the City of New York are dismissed; and it is further

ORDERED that defendant Nouveau Elevator Industries LLC’s cross claims against the Princeton Club of New York are severed and continue; Nouveau shall file a default motion or discontinuance by December 2, 2022; and it is further

ORDERED that plaintiff’s motion to appoint a Referee to compute and report the amount due and owing to the Lender pursuant to RPAPL 1321 is granted, and plaintiff is directed to submit a proposed order in MS Word to SFC-Part48@nycourts.gov and e-file a copy.



11/3/2022

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