

Stanziale v Danielle Uniform Maintenance Inc.

2023 NY Slip Op 30695(U)

March 5, 2023

Supreme Court, New York County

Docket Number: Index No. 654208/2022

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

-----X
 BENJAMIN A. STANZIALE,

Plaintiff,

- v -

DANIELLE UNIFORM MAINTENANCE INC., CARNEGIE
 VALET CLEANING CORP., and DANIELLE LINEN, INC.

Defendants.
 -----X

INDEX NO. 654208/2022

MOTION DATE _____

MOTION SEQ. NO. 001

**DECISION + ORDER ON
 MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

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

In motion seq. no. 001, plaintiff, in his capacity as Chapter 7 Trustee of Project Laundry OPCO LLC d/b/a Fairway Laundry (Project Laundry), moves, pursuant to CPLR 3215, to set aside the transfers at issue and grant plaintiff judgment on (1) the first cause of action against Danielle Uniform Maintenance Inc. in the sum of \$1,339,539.61 with interest from August 26, 2021 at 9% per annum: (i) pursuant to Debtor and Creditor Law (DCL) §§ 273, 274, 275, 276, 278 and/or 279 (on account of \$1,177,700.90 in transfers from January 18, 2019 through June 29, 2020, which, with interest from the dates of each transfer, exceed the underlying judgment of \$1,339,539.61 with interest from August 26, 2021); or to the extent that is an award of \$1,339,539.61 is not granted (ii) pursuant to DCL § 273-a for the sum of \$107,200.00 pursuant to DCL 273-a (with interest from the date of each transfer that comprises the Danielle Linen, Inc.'s \$107,200.00 transfer to Danielle Uniform Maintenance Inc., but in no event later than June 29, 2020); (2) on the second cause of action against Danielle Uniform Maintenance Inc. in the sum of \$710,178.43 with interest from August 26, 2021

at 9% per annum (on account of \$1,507,000.00 and \$318,510.00 in transfers, exceed the underlying judgment of \$710,178.43 with interest from August 26, 2021) pursuant to DCL §§ 273, 273-a, 274, 275, 276, 278 and/or 279; and (3) an award of reasonable legal fees, pursuant to DCL § 276-a, on the grounds that Danielle Uniform Maintenance Inc. has willfully failed and refused to appear in this action and has defaulted, severing this action and directing the judgment clerk to enter judgment in those fixed sum. This motion in unopposed.

On November 4, 2019, Project Laundry commenced an action (Index No. 656502/2019) against Carnegie Valet Cleaning Corp. (Carnegie Valet), Danielle Linen, Inc. and Gotham Express Laundry Holdings LLC (Gotham Express), asserting claims for an accounting, injunction, breach of contract (of the Carnegie Valet Note, the Danielle Linen, Inc. Note, the Gotham Express Guaranty Agreement and an Outsourcing Agreement), and conversion (Underlying Action). On August 24, 2021, the court entered judgment in Project Laundry's favor against Carnegie Valet in the amount of \$710,178.43 and against Danielle Linen, Inc. in the amount of \$1,339,539.61. (NYSCEF 9, Judgment.)

In this action, plaintiff alleges that, from January 18, 2019 through June 29, 2020, Danielle Linen, Inc. transferred \$1,177,700.90 to Danielle Uniform Maintenance Inc. \$107,200.00 of which was transferred after the Underlying Action was commenced, during the period November 19, 2019 through June 29, 2020. (NYSCEF 22, Summons and Complaint ¶ 32.) Plaintiff also alleges that, from April 1, 2019 through April 1, 2020, Carnegie Valet transferred \$1,507,000.00 to Danielle Uniform Maintenance Inc. \$738,000.00 of which was transferred after the Underlying Action was commenced

during the period November 14, 2019 through April 1, 2020, and from August 16, 2019 through May 28, 2020, Carnegie Valet also transferred \$318,510.00 to Danielle Uniform Maintenance Inc. \$236,610.00 of which was transferred after the Underlying Action was commenced during the period November 10, 2019 through May 28, 2020. (*Id.* ¶¶ 34, 36.) Plaintiff brings this action for fraudulent conveyance.

“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].) “Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action. The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts.” (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994] [citations omitted].)

Proof of Service

Plaintiff has submitted proof that Danielle Uniform Maintenance Inc. was served with the summons and complaint. (NYSCEF 25, Affidavit of Service, NYSCEF 26, Affirmation of Additional Mailing.)

Proof of Facts

CPLR 3215 (f) requires a plaintiff to submit “proof of the facts constituting the claim, the default and the amount due by affidavit Where a verified complaint has been served, it may be used as the affidavit of the facts constituting the claim and the amount due; in such case, an affidavit as to the default shall be made by the party or the party’s attorney.” 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].)

Here, the complaint is verified by plaintiff's counsel, who affirms that “[t]he grounds of deponent's belief as to all matters not stated upon deponent's own knowledge are as follows: documents produced by TD Bank, NA and Sterling Bank; and the pleadings and judgment in the Underlying Action.” (NYSCEF 22, Summons and Complaint at 17.) This is sufficient.

Further, plaintiff has sufficiently alleged that these fraudulent transfers occurred without fair consideration, rendering Danielle Linen and Carnegie Valet insolvent, with the intent to defraud Danielle Linen and Carnegie Valet's creditors, when defendants knew Danielle Linen and Carnegie Valet had incurred or were about to incur debts. (See NYSCEF 22, Summons and Complaint ¶¶ 74-102.) In addition, plaintiff submits proof of the transfers between Danielle Linen, Carnegie Valet, and Danielle Uniform Maintenance Inc. in the form of bank statements. (NYSCEF 23 & 24, Bank Statements.)

Proof of Default

Plaintiff's counsel affirms that Danielle Uniform Maintenance Inc. failed to answer the complaint. (NYSCEF 21, Strassberg aff ¶ 4.)

Attorneys' Fees

DCL § 276-a provides for an award of attorneys' fees when a party proves that a transfer is made and received with intent to hinder, delay or defraud either present or future creditors. Plaintiff has sufficiently alleged such.

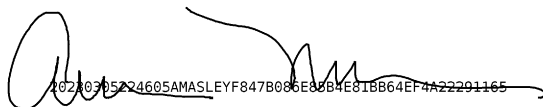
Danielle Linen and Carnegie Valet

Plaintiff does not allege claims against these named defendants, and thus, the complaint is dismissed as to Danielle Linen and Carnegie Valet.

Accordingly, it is

ORDERED that the plaintiff's motion for a default judgment against Danielle Uniform Maintenance Inc is granted, and the Clerk of the Court is directed to enter judgment in favor of plaintiff and against Danielle Uniform Maintenance Inc. in the sum of \$ 2,049,718.04, with interest at the rate of 9% per annum from the date of August 24, 2021, until the date of the decision on this motion, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that plaintiff is awarded reasonable attorneys' fees in connection with this action and is direct to submit an affirmation of services, bios of attorneys and staff who worked on this matter, invoices, and any other relevant supporting documentation of the fee amount within 10 days of the date of this order or waive. Plaintiff is directed to e-file and email this information.



3/5/2023
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

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|-------------------------------------|---------------|--------------------------|--------|
| <input type="checkbox"/> | CASE DISPOSED | <input type="checkbox"/> | DENIED |
| <input checked="" type="checkbox"/> | GRANTED | | |

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|-------------------------------------|-----------------------|--------------------------|-----------|
| <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION | <input type="checkbox"/> | OTHER |
| <input type="checkbox"/> | GRANTED IN PART | | |
| <input type="checkbox"/> | SUBMIT ORDER | | |
| <input type="checkbox"/> | FIDUCIARY APPOINTMENT | <input type="checkbox"/> | REFERENCE |

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN