

O'Shea Partners LLP v Gladstone

2023 NY Slip Op 30948(U)

March 24, 2023

Supreme Court, New York County

Docket Number: Index No. 656198/2016

Judge: Sabrina Kraus

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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. SABRINA KRAUS PART 57TR

Justice

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O'SHEA PARTNERS LLP,

Plaintiff,

- v -

ROBERT GLADSTONE, MADISON EQUITIES,

Defendant.

-----X

INDEX NO. 656198/2016

MOTION DATE 04/07/2023

MOTION SEQ. NO. 009

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 009) 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 260, 261

were read on this motion to/for JUDGMENT - DEFAULT

Plaintiff commenced this action to recover \$295,946.42 in legal fees and expenses alleged due by Defendants.

Plaintiff alleges the fees are owed Plaintiff for services that it rendered Defendant Madison Equities (Madison) in connection with six litigations commenced on its behalf. Plaintiff further asserts Defendant Robert Gladstone (Gladstone) personally guaranteed Madison's legal fees. The parties entered into a written retainer agreement on March 6, 2013, between Plaintiff, Madison, and Gladstone, which Gladstone personally executed. Pursuant to the terms of that agreement, Gladstone retained Plaintiff on an hourly basis, and the fees and services provided were detailed in monthly invoices.

Plaintiff alleges they were actively involved in the representation of Defendants for more than three years, and monthly invoices for these services were timely sent to Defendants. Defendants never met their obligations to remain current on their legal fees, and the subject fees remain unpaid.

The summons and complaint were filed on November 22, 2016. By stipulation, Defendants accepted informal service of the summons and complaint in exchange for an extension of time to file an answer.

On February 7, 2017, Defendants appeared by counsel and filed an answer asserting a general denial, seven affirmative defenses and two counterclaims for declaratory judgment and breach of fiduciary duty.

On September 29, 2017, the parties entered into a preliminary conference order establishing a timeline for discovery to be produced. The court then held a compliance conference on March 2, 2018, and then a status conference on May 4, 2018, to discuss outstanding discovery.

On June 11, 2018, Plaintiff moved for an order compelling Defendants to provide outstanding discovery. Defendants cross moved for similar relief. The motions were granted in part on June 24, 2019. A status conference was then held on August 1, 2019.

On December 3, 2023, in response to Defendants' motion to be relieved, Defendants filed a consent to change attorneys.

Defendants' new counsel thereafter filed a motion to amend the counterclaims and Plaintiff's cross moved in opposition and to dismiss the counterclaims. On February 26, 2020, the court (Reed, J) granted Defendants' motion to amend and denied Plaintiff's motion to dismiss the counterclaims.

An amended answer with counterclaims was filed on March 7, 2020, and Plaintiff moved a second time to dismiss the counterclaims on April 8, 2020.

On December 23, 2020, the court (Reed, J) denied Plaintiff's motion.

On May 20, 2021, Plaintiff's filed a consent to change attorney.

The court held a status conference on July 27, 2022, wherein a schedule was set for all outstanding discovery. The order provided an end date of January 8, 2023, for all fact discovery.

On September 22, 2023, Defendants' counsel moved to be relieved, and this court granted the motion, without opposition. The action was stayed for forty (40) days for Defendants to retain new counsel.

On December 2, 2023, the court held a status conference, wherein Gladstone appeared *pro se*. Madison did not appear by counsel and was in default.

On February 6, 2023, Plaintiff moved pursuant to CPLR 3215(b) and 3126(3), for a default as against Madison and Gladstone, on each of the four causes of action, in the amount of \$295,946.42, as well as dismissal of the counterclaims and affirmative defenses.

On February 8, 2023, Gladstone, *pro se*, filed opposition.

PENDING MOTION

CPLR § 3215(a) provides, in pertinent part, that “[w]hen a defendant has failed to appear, plead or proceed to trial... the plaintiff may seek a default judgment against [it].” “On a motion for leave to enter a default judgment pursuant to CPLR §3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party's default in answering or appearing.” *Atlantic Cas. Ins. Co. v RJNJ Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011).

Plaintiff's motion for a default granted as to Madison

Madison originally appeared by counsel, who was then relieved. New counsel has failed to appear on their behalf. A corporation cannot appear *pro se*, pursuant to CPLR §321(a). In support of the motion for a default, Plaintiff submits the affirmation of Michael E. Petrella, counsel for Plaintiff; the 2016 engagement letter between the parties and emails confirming an

agreed upon payment schedule. Plaintiff has established prima facie entitlement to a default as to Madison.

Plaintiff's motion for a default is denied as to Gladstone

It is undisputed that Gladstone has failed to submit the discovery responses required under previous court status conference orders. However, Gladstone was previously represented by two different attorneys and is now pursuing the action as a *pro se* litigant. In light of the change of attorneys and the forty (40) day stay that was previously in place, the court is not inclined to grant a default as to Gladstone at this point. Plaintiff may renew the motion for a default if Gladstone fails to timely comply with the next status conference order.

Wherefor, it is hereby

ORDERED Plaintiff's motion for a default judgement is granted as to Madison Equities LLC, damages to be determined at trial; and it is further


ORDERED Plaintiff's motion for a default as to Robert Gladstone is denied without prejudice to renewal upon any further default in complying with future discovery orders; and it is further

ORDERED the parties are to appear for a virtual status conference on April 13, 2023, at 11:30 am, via MS Teams; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on defendants and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E- Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the court.

3/24/2023			
DATE			SABRINA KRAUS, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE