

DRG Hospitality Group v Grgurev
2023 NY Slip Op 32143(U)
June 30, 2023
Supreme Court, New York County
Docket Number: Index No. 150755/2023
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M-----X
THE DRG HOSPITALITY GROUP,

Plaintiff,

- v -

FERDO GRGUREV, OMER GRGUREV, NATALIA
GRGUREV, MICHELLE GRGUREV, ROBERT GRGUREV,
OCINOMLED LTD, JOSEPH LICUL, DENNIS
TURCINOVIC, BEAVER EQUITIES GROUP LP, THEDRG
CORP.,Defendants.
-----X

INDEX NO. 150755/2023

MOTION DATE 05/15/2023,
06/14/2023

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 36, 51, 52, 53
were read on this motion for DEFAULT JUDGMENT.The following e-filed documents, listed by NYSCEF document number (Motion 002) 38, 39, 40, 41, 42,
43, 44, 45, 46, 47, 48, 49, 50, 54, 55
were read on this motion to EXTEND TIME.

Defendants and Counterclaim plaintiffs Ferdo Grgurev, Michelle Grgurev, Robert Grgurev, and Ocinomled Ltd. (collectively, "Counterclaim Plaintiffs"), move for an Order (a) pursuant to CPLR § 3215, judgment is granted in favor of Counterclaim Plaintiffs and against Defaulting Counterclaim-Defendant Beaver Equities Group L.P. ("Beaver Entities") with respect to liability on Counts I, III, VI, VII, VIII, and IX of the Verified Counterclaims; (b) permanently enjoining Beaver Equities, and its respective officers, agents, employees, affiliates, successors, assigns, and all persons acting in concert with or under the direction of Beaver Equities from using the Asserted Marks or any marks confusingly similar thereto, or infringing the Asserted Marks in any manner; (c) permanently enjoining the Beaver Entities from leasing 56 Beaver Street to any tenant that uses or intends to use the Asserted Marks or any marks confusingly

similar thereto without paying a license to Ocinomled; (d) a declaratory judgment pursuant to CPLR 3001 declaring the 56 Beaver Street lease signed by Beaver Equities and Counterclaim-Defendant DRGHGI void under NY Real Prop. L. § 231(1); and (e) awarding to Counterclaim Plaintiffs all fees and costs incurred in preparing this motion for default judgment, and such other and further relief which this Court finds just, proper, and equitable.

Beaver Equities moves separately for an order pursuant to CPLR §3012(d) compelling Counterclaim Plaintiffs to accept service of untimely answer filed herewith as Exhibit A (NYSCEF 40).

Although the Counterclaim Plaintiffs submitted evidence demonstrating compliance with the requirements of CPLR 3215, Beaver Equities have provided a rational explanation for the delay in responding to the Complaint (*see* NYSCEF 39 [“Coppe Affirm.”]). There is evidence in the record that an incorrect law firm was originally served with the Counterclaims on February 8, 2023 (NYSCEF 13, NYSCEF 48–49), and after service was correctly executed on March 7, 2023 (NYSCEF 22), counsel for Beaver Equities submits that due to the ongoing litigation involving the parties both before this Court in a related action and in federal court, counsel inadvertently neglected to calendar the deadline to interpose a timely answer to the Counterclaims (Coppe Affirm. ¶12). Counsel for Beaver Equities requested an extension of time to file its answer three days after it was due (NYSCEF 32), which was rejected (NYSCEF 33). Beaver Equities then filed its answer on May 8, 2023 (NYSCEF 40). There is no evidence that the default was willful (*see Jolkovsky v Legeman*, 32 AD3d 418, 419 [2d Dept 2006]). Further, the delay in answering was brief (*see Settles v OneWest Bank*, 186 AD3d 1551, 1553 [2d Dept 2020] [default excused when delay was nearly two months]; *Harris v City of New York*, 30 AD3d 461 [2d Dept 2006] [default excused where there was a six-week delay in filing answer]; *Liberty Mutual Insurance*

Company v Carranza, 71 Misc3d 1205(A) (Sup Ct, NY County 2021] [default excused when delay was only “a matter of weeks”]). Finally, the Counterclaim Plaintiffs have not identified any compelling prejudice from the delay, other than the federal court action addressing the same issues herein.

Public policy favors the resolution of cases on the merits (*Bunch v Dollar Budget, Inc.*, 12 AD3d 391 [2d Dept 2004]). Given that the delay in answering was brief, that the default was not willful, and the lack of prejudice to Counterclaim Plaintiffs, Beaver Equities should be “granted an opportunity to defend plaintiffs’ claims on the merits” instead of having those claims be resolved on default (*Naber Electric v Triton Structural Concrete, Inc.*, 160 AD3d 507, 508 [1st Dept 2018]).

Accordingly, it is

ORDERED that the Counterclaim Plaintiffs’ motion for default judgment (Mot. Seq. 001) is **DENIED**; it is further

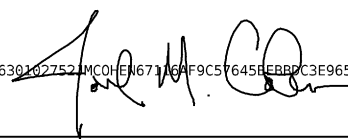
ORDERED that Beaver Equities’ motion to compel acceptance of its late Answer (Mot. Seq. 002) is **GRANTED**; it is further

ORDERED that the parties appear for a preliminary conference on August 8, 2023, at 10:00 a.m., with the parties circulating dial-in information to chambers at SFC-Part3@nycourts.gov in advance of the conference.¹

This constitutes the Decision and Order of the Court.

¹ If the parties agree on a proposed preliminary conference order in advance of the conference date (consistent with the guidelines in the Part 3 model preliminary conference order, available online at <https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/PC-Order-Part-3.pdf>), they may file the proposed order and email a courtesy copy to chambers with a request to so-order in lieu of holding the conference.

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JOEL M. COHEN, J.S.C.

6/30/2023

DATE

CHECK ONE:

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CASE DISPOSED

☐

GRANTED

☐

DENIED

APPLICATION:

☐

SETTLE ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☒

NON-FINAL DISPOSITION

☒

GRANTED IN PART

☐

OTHER

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE