

**Saliba v Kenney**

2023 NY Slip Op 32508(U)

July 21, 2023

Supreme Court, New York County

Docket Number: Index No. 653588/2021

Judge: Joel M. Cohen

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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 03M

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KYLE SALIBA, RAYMOND AZZI,  
Plaintiffs,

INDEX NO. 653588/2021

- v -

MOTION DATE 05/12/2023

MATTHEW KENNEY, MKC MANAGEMENT GROUP, LLC,  
MK CUISINE GOLBAL, LLC

MOTION SEQ. NO. 001

Defendants.

**DECISION + ORDER ON  
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21, 26

were read on this motion for DEFAULT JUDGMENT.

Khalil Saliba and Raymond Azzi (“Plaintiffs”) move for an order pursuant to CPLR 3215(b) finding defendants Matthew Kenney (“Kenney”), MKC Management Group, LLC (“MKC Management”) and MK Cuisine Global, LLC (collectively, “Defendants”) in default for failing to Answer the Complaint and referring the action for a prehearing conference and an inquest on damages.

By Order and Decision dated June 7, 2023, this Court granted the motion to withdraw as counsel filed by counsel for Defendants (NYSCEF 27). The Order directed that Defendants appoint substitute counsel, or in the case of Defendant Matthew Kenney, advise the Court of his intention to proceed in this matter *pro se* within thirty days (*id.*). The Order also granted a thirty-day extension to respond to the Plaintiffs’ motion for default judgment (*id.*).

Defendants have failed to respond to the default motion, nor have they updated the Court as to their representation. For the following reasons, Plaintiffs’ motion is granted.

Plaintiffs have submitted un rebutted evidence demonstrating compliance with the requirements of CPLR 3215. Plaintiffs have established a *prima facie* case by submitting the Verified Complaint (NYSCEF 2), the Affidavit of by Plaintiff Khalil Saliba, sworn to on March 20, 2023 (NYSCEF 20 [“Saliba Aff.”]), the Affirmation of Counsel (NYSCEF 18 [“Fogel Affirm.”]), and the Management Services Agreement (NYSCEF 21). Plaintiffs have established proof of service of the summons and complaint upon Defendants (*see* NYSCEF 3-5), and proof of the defendants’ failure to timely serve an answer or motion upon Plaintiffs<sup>1</sup> (CPLR 3215[f]; *Kolonkowski v Daily News, L.P.*, 94 AD3d 704, 705 [2d Dept 2012]). Plaintiffs also submitted email correspondence by Plaintiffs’ counsel notifying counsel for Defendants that Plaintiffs were moving for a default (NYSCEF 19). Plaintiffs submit that there was no response to this email (Fogel Affirm. ¶12).

Defendants have not responded to the complaint or this motion, and thus have provided no evidence in opposition to Plaintiffs’ motion. As such, Plaintiffs’ motion for default judgment on liability is granted (*Reynolds Secs. v Underwriters Bank & Trust Co.*, 44 NY2d 568, 572 [1978]; *Arent Fox Kintner Plotkin & Kahn v Lurzer GmbH*, 297 AD2d 590 [1st Dept 2002]), and this matter will be referred to a Special Referee to determine damages.

Defendants may seek a vacatur of the instant default judgment if they can satisfy the requirements of CPLR § 5015, CPLR § 317, or any other relevant law.

Therefore, it is:

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<sup>1</sup> On July 15, 2021, counsel for Defendants filed a Notice of Appearance (NYSCEF 6), and the parties entered into six stipulations extending the time to answer the Complaint (NYSCEF 7, 8, 12, 13, 14, 15). Pursuant to the last stipulation, which was filed on March 8, 2022, Defendants’ time to respond to the Complaint was extended to March 22, 2022 (NYSCEF 15).

**ORDERED** that Plaintiffs' motion for entry of a default judgment against Defendants pursuant to CPLR § 3215 is **GRANTED**; it is further

**ORDERED** this matter is directed to an Inquest before a Special Referee who shall hear and make a recommendation to the Court as to Plaintiffs' damages, if any; it is further

**ORDERED** that the powers of the JHO/Special Referee to determine shall not be limited further than as set forth in the CPLR; and it is further

**ORDERED** that this matter is hereby referred to the Special Referee Clerk (Room 119 M, 646-386-3028 or spref@courts.state.ny.us) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this Court at [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh) at the "Local Rules" link), shall assign this matter to an available Special Referee to determine as specified above; and it is further

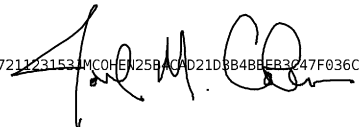
**ORDERED** that Plaintiffs' counsel shall serve a copy of this order with notice of entry on Defendants within five days and that counsel for Plaintiffs shall, after thirty days from service of those papers, submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (which can be accessed at <http://www.nycourts.gov/courts/ljd/supctmanh/refpart-infosheet-10-09.pdf>) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

**ORDERED** that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR § 4318) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and that the parties shall appear for the reference hearing, including

with all such witnesses and evidence as they may seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referee's Part in accordance with the Rules of that Part; and it is further

**ORDERED** that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue specified above shall proceed from day to day until completion.

This constitutes the Decision and Order of the Court.

<u>7/21/2023</u> <b>DATE</b>	 <small>202307211223153 JMC0HEN258ACAD21D884BEEB3C47F036CC36255</small> <b>JOEL M. COHEN, J.S.C.</b>			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	
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