

**MacDougal & Sixth Realty LLC v Vergine**

2024 NY Slip Op 30993(U)

March 26, 2024

Supreme Court, New York County

Docket Number: Index No. 152221/2021

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART **33M**

*Justice*

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MACDOUGAL & SIXTH REALTY LLC,  
Plaintiff,

INDEX NO. 152221/2021

MOTION DATE 09/18/2023

MOTION SEQ. NO. 004

- v -

RICHARD VERGINE, AS THE EXECUTOR OF THE  
ESTATE OF JEFFREY M. APPLGATE,  
Defendant.

**DECISION + ORDER ON  
MOTION**

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RICHARD VERGINE, AS THE EXECUTOR OF THE  
ESTATE OF JEFFREY M. APPLGATE,  
Third-Party Plaintiff,

-against-

ALTA CUCINA LLC

Third-Party Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, there being no opposition and good cause having been shown, Defendant/Third-Party Plaintiff Richard Vergine’s (“Vergine”) motion, made as the Executor to the Estate of Jeffrey M. Applegate, for an Order granting default judgment against Third-Party Defendant Alta Cucina LLC (“Alta Cucina”) and in favor of Vergine, is granted.

An applicant for default judgment against a defendant must submit: (i) proof of service of the summons and complaint, (ii) proof of the facts constituting the claim, and (iii) proof of the defaulting defendant’s failure to answer or appear (*PV Holding Corp v AB Quality Health Supply Corp*, 189 AD3d 645 [1st Dept 2020]). Affidavits submitted in support of a motion for default

judgment only need to allege enough facts to allow a court to assess where a viable cause of action exists (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). In undertaking this review, the Court is mindful that “defaulters are deemed to have admitted all factual allegations in the complaint and all reasonable inferences that flow from them (*Al Fayed v Barak*, 39 AD3d 371, 372 [1st Dept 2007]).

The Court finds that Vergine has satisfied proof of service of the Third-Party Summons and Verified Third-Party Complaint (NYSCEF Doc. 112) upon Alta Cucina by attaching affidavits of service evidencing personal service upon Alta Cucina through authorized representatives on July 18, 2023 (NYSCEF Doc. 113) and September 1, 2023 (NYSCEF Doc. 114). Vergine has also satisfied its minimal burden of proving the facts constituting its claim by submitting a Verified Third-Party Complaint (NYSCEF Doc. 112). Further, Alta Cucina has failed to file an answer to Vergine’s Verified Third-Party Complaint or otherwise appear despite its time for doing so having expired. Therefore, entry of default judgment as to liability against Alta Cucine and in favor of Vergine on Vergine’s First Cause of Action for common-law indemnification and Second Cause of Action for common-law contribution, is appropriate.

Accordingly, it is hereby,

ORDERED that Defendant/Third-Party Plaintiff Richard Vergine’s motion for default judgment against Third-Party Defendant Alta Cucina LLC is granted as to liability on Vergine’s First Cause of Action for common-law indemnification and Second Cause of Action for common-law contribution; and it is further

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ORDERED that an inquest on damages against Third-Party Defendant Alta Cucina LLC on Defendant/Third-Party Plaintiff Richard Vergine's First Cause of Action for common-law indemnification and Second Cause of Action for common-law contribution is directed; and it is further

ORDERED that a copy of this Order with notice of entry be served by Defendant/Third-Party Plaintiff Richard Vergine upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is directed, upon the filing of a note of issue and a certificate of readiness and the payment of proper fees, if any, to place this action on the appropriate calendar for the inquest hereinabove directed; and it is further

ORDERED that such service 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 of the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further

ORDERED that the active parties in this case are directed to submit a proposed Status Conference Order to the Court on or before April 30, 2024 via e-mail to [SFC-Part33-Clerk@nycourts.gov](mailto:SFC-Part33-Clerk@nycourts.gov). If the parties are unable to agree to a proposed Status Conference Order, the parties are directed to appear for an in-person Status Conference with the Court on May 1, 2024 at 9:30 a.m. in 60 Centre Street, Room 442, New York, New York; and it is further

ORDERED that within 30 days of entry, counsel for Defendant/Third-Party Plaintiff Richard Vergine shall serve a copy of this Decision and Order, with notice of entry, via first-class mail, on all parties to this case at their last known business or residential address; and it is further

*[The remainder of this page is intentionally left blank]*

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

3/26/2024  
DATE

Mary V Rosado JSC  
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE