

508 Operations, LLC v Artistic Holiday Designs, LLC

2024 NY Slip Op 32510(U)

July 15, 2024

Supreme Court, New York County

Docket Number: Index No. 652355/2023

Judge: Joel M. Cohen

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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

-----X

508 OPERATIONS, LLC,

Plaintiff,

- v -

ARTISTIC HOLIDAY DESIGNS, LLC, AMAZE LIGHT
FESTIVAL CHICAGO, LLC, AMAZE LIGHT FESTIVAL
MANAGEMENT, LLC, AMAZE LIGHT FESTIVAL NEW
YORK CITY, LLC, DEREK NORWOOD, SAMANTHA
BARKUS

Defendants.

-----X

INDEX NO. 652355/2023

MOTION DATE 04/08/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79

were read on this motion to STRIKE ANSWER AND FOR DEFAULT JUDGMENT

Plaintiff 508 Operations, LLC’s (“Plaintiff”) motion to strike Defendants’ Answer and for a default judgment is **granted** to the extent that the Answer is stricken, and Plaintiff is awarded a default judgment on the issue of liability to the extent set forth below.

A. Defendants Have Failed to Comply with the Court’s Discovery Orders

Plaintiff asserts claims against Defendants for breach of contract, account stated, unjust enrichment, fraud, and alter ego liability for failure to pay for labor and related services provided in connection with the Amaze Light Festival at Citi Field from 2022-2023 (NYSCEF 2 [Complaint]). Defendants deny the Plaintiff’s allegations and assert several affirmative defenses (NYSCEF 9 [Answer]).

After issue was joined, on August 7, 2023, Plaintiff served discovery requests (NYSCEF 28) and interrogatories (NYSCEF 41) on Defendants. On October 4, 2023, the Court entered a

stipulated Preliminary Conference Order setting April 1, 2024, as the end date for discovery (NYSCEF 15). The Preliminary Conference Order provides for the prevailing party to recover its reasonable attorney's fees and costs in connection with any discovery-related motion.

On November 16, 2023, Plaintiff submitted a Rule 14 letter indicating that Defendants had not produced any documents, despite representations that they would do so (NYSCEF 18). Defendants did not provide a response to Plaintiff's Rule 14 letter.

A compliance conference was held on December 5, 2023. On December 11, 2023, the Court entered a stipulated order extending the end date for discovery to May 1, 2024 (NYSCEF 20). The order required Defendants to begin document production on or by January 12, 2024, and to complete document production by January 26, 2024. The order further provides for cost shifting in connection with any related motion practice, including Plaintiff's contemplated motion to strike and for a default judgment pursuant to CPLR 3126(3).

On March 5, 2024, Plaintiff requested a second extension because, despite the Court's, order, Defendants failed to produce any documents (NYSCEF 21). On March 13, 2024, Plaintiff made a second Rule 14 application for a pre-motion conference (NYSCEF 22). Defendants again failed to provide a response.

On March 19, 2024, the parties appeared for a Rule 14 conference (NYSCEF 40). On March 22, 2024, counsel for Defendants represented that he intended to move "to be relieved as counsel next week" (NYSCEF 40). However, no motion to be relieved has been filed.

On April 9, 2024, the Court entered an order to show cause on Plaintiff's motion to strike and for a default judgment, setting April 22, 2024, as the deadline for opposition papers and April 30, 2024, as the return date (NYSCEF 76). Plaintiff's motion is supported by an affirmation of its Chief Executive Officer, Zachary Londrico ("Londrico Aff. [NYSCEF 44]).

The Londrico Affirmation annexes copies of the pertinent agreements, correspondence, work orders and invoices (NYSCEF 45-74). The Londrico Affirmation also includes a spreadsheet calculating that, as of the date of filing, Plaintiff's damages are \$1,268,828.33.

Defendants failed to submit opposition papers in accordance with the Court's Order to Show Cause. However, on the return date, April 30, 2024, Defendants requested an adjournment. The Court granted Defendants' application and set May 10, 2024, as the deadline for opposition papers and May 20, 2024, as the adjourned return date (NYSCEF 79). Despite the adjournment, no opposition papers have been filed nor has any further extension been requested (and given the foregoing, none would be granted).

B. The Answer is Stricken and a Default Judgment as to Liability is Granted

CPLR 3126(3) provides, in relevant part:

If any party. . .refuses to obey an order for disclosure or wilfully fails to disclose information which the court finds ought to have been disclosed pursuant to this article, the court may make such orders with regard to the failure or refusal as are just, among them:

3. an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or any part thereof, or rendering a judgment by default against the disobedient party.

"CPLR 3126 provides a range of options for a court to utilize in addressing a party's refusal to comply with a discovery order, or a wilful failure to disclose information the court finds ought to have been disclosed. The drastic sanction of striking pleadings is only justified when the moving party shows conclusively that the failure to disclose was wilful, contumacious or in bad faith, a burden borne by the movant" (*Christian v City of New York*, 269 AD2d 135, 136-37 [1st Dept 2000] citing *Orlando v Arcade Cleaning Corp. by Initial Contr. Services, Inc.*, 253 AD2d 362, 363 [1st Dept 1998]). For instance, a "longstanding pattern of noncompliance

with court orders and discovery demands” may warrant the striking of a pleading (*Figiel v Met Food*, 48 AD3d 330 [1st Dept 2008] citing *Goldstein v CIBC World Markets Corp.*, 30 AD3d 217 [1st Dept 2006]).

Defendants have been on notice since at least December 11, 2023, the date of the Court’s stipulated extension order, that dispositive relief pursuant to CPLR 3126(3) “was a real option” (*Arts4All, Ltd. v Hancock*, 54 AD3d 286, 289 [1st Dept 2008], *affd*, 12 NY3d 846 [2009], *cert. denied*, 559 US 905 [2010]). Defendants have not responded to Plaintiff’s discovery demands or Rule 14 letters. Defendants have also disobeyed the Court’s Preliminary Conference Order and the stipulated December 11, 2023, order authorizing the instant motion. Further, despite the adjournment granted by the Court, Defendants have not submitted any opposition to this motion. Defendants “failure to offer a reasonable excuse for [their] noncompliance gives rise to an inference of willful and contumacious conduct” (*Figiel*, 30 AD 3d at 217 citing *Siegman v Rosen*, 270 AD2d 14, 15 [1st Dept 2000]).

In those circumstances, the Court finds that Defendants’ failures to provide discovery and failure to comply with Court orders, including an order authorizing the instant motion, was willful and contumacious. Further, the detailed and unrebutted Londrico Affirmation demonstrates the merits of Plaintiffs’ causes of action. Defendants’ failure to submit opposition, despite the Court’s granting of their belated request for an adjournment, to this motion leaves the Court with no other viable option other than to strike the Answer and grant a default judgment.

The Londrico Affirmation provides a thorough analysis of the damages owed. However, New York law provides that “a defendant whose answer is stricken as a result of a default admits all traversable allegations in the complaint, including the basic allegation of liability, but does not admit the plaintiff’s conclusion as to damages” (*Rokina Opt. Co., Inc. v Camera King, Inc.*,

63 NY2d 728, 730 [1984]). Accordingly, the Court grants a default judgment on liability (*Yes Contr. Inc. v CLST Enterprises LLC*, 193 AD3d 535 [1st Dept 2021]). The Court will afford Defendants a final opportunity to challenge the claimed damages at an inquest.

* * * *


Accordingly, it is

ORDERED that Plaintiff's motion to strike Defendant's Answer and for a default judgment is **GRANTED IN PART** to the extent that the Answer is stricken, and a default judgment is awarded on the issue of liability; it is further

ORDERED that the parties confer and submit a proposed schedule on NYSCEF for an inquest on damages, including any pre-hearing briefing, within seven (7) days.

This constitutes the decision and order of the Court.

7/15/2024
DATE


JOEL M. COHEN, J.S.C.

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