

Lincoln Intl. LLC v Helmsley Spear, LLC

2024 NY Slip Op 32516(U)

July 10, 2024

Supreme Court, New York County

Docket Number: Index No. 653072/2022

Judge: Nicholas W. Moyne

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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. NICHOLAS W. MOYNE PART 41M

Justice

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LINCOLN INTERNATIONAL LLC,

Plaintiff,

INDEX NO. 653072/2022

MOTION DATE 04/25/2023

MOTION SEQ. NO. 001

- v -

HELMSLEY SPEAR, LLC, KENT M. SWIG, FALCON
PACIFIC CONSTRUCTION/BUILDERS, LLC, SWIG
EQUITIES, LLC, DIGNITY HOLDINGS LLC

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22

were read on this motion to/for JUDGMENT - DEFAULT.

Upon the foregoing documents, it is

Plaintiff, Lincoln International LLC (“Lincoln”), commenced the underlying action via summons with notice to recover for damages arising out of an alleged breach of contract and/or breach of sublease agreement. Lincoln now moves for an order, pursuant to CPLR § 3215, directing entry of a default judgment against defendant sublessor, Helmsley Spear, LLC, and defendant guarantors, Kent M. Swig, Falcon Pacific Construction/Builders, LLC, Swig Equities, LLC, and Dignity Holdings, LLC, (collectively “defendants”), for amounts due for the unpaid fixed rent and additional rent under the terms of a sublease, in the amount of \$342,274.99, plus interest and fees.

On or about June 18, 2020, Lincoln entered into a sublease with Helmsley Spear, LLC (“Helmsley”), for a portion of the 3rd floor of the building located at 444 Madison Avenue, New York, New York 10022, until July 30th, 2024. Additionally, defendants Kent M. Swig, Falcon Pacific Construction/Builders, LLC, Swig Equities, LLC, and Dignity Holdings, LLC, executed

a Limited Guaranty of Payment and Performance, guaranteeing full and prompt payment and performance under the Sublease (*see* NYSCEF Doc. No. 16). Helmsley has allegedly breached this sublease agreement by failing to remit fixed rent, additional rent, and rental, as defined in the sublease, since April of 2022. Additionally, the remaining defendants have breached their Guaranty by failing to pay the amount due to Lincoln, with the exception of a partial payment made on December 21, 2022.

Plaintiff duly served defendant Kent M. Swig, pursuant to CPLR § 308 (2), with the summons with notice for this action on September 6th, 2022 (NYSCEF Doc. No. 4). Additional notice was sent on October 6th, 2022, as required by CPLR § 3215 (g)(3)(i) (NYSCEF Doc. No. 13). Kent M. Swig has not appeared or otherwise served a demand for a complaint within the applicable time-period or required date of October 25, 2022.

Additionally, on September 6th, 2022, plaintiff served defendants Dignity Holdings, LLC, Falcon Pacific Construction/Builders, LLC and Swig Entities, LLC, pursuant to CPLR § 311-a, with the summons with notice (NYSCEF Doc. No. 2, 3, 5). Dignity Holdings, Falcon Pacific, and Swig Entities have not appeared or served a demand for a complaint by the required date, September 26, 2022. Helmsley Spear, LLC was served, under CPLR § 311-a, with a summons with notice on September 8th, 2022 (NYSCEF Doc. No. 6). Helmsley Spear has not appeared or served a demand for a complaint by the required date, September 28th, 2022.

On April 24, 2023, within the statutory one-year period following Helmsley Spear, LLC, Kent M. Swig, Falcon Pacific Construction/Builders, LLC, Swig Equities, LLC, and Dignity Holdings, LLCs', default, Lincoln filed its application seeking entry of a default judgment against the defendants (*see* CPLR § 3215 [a]). Additionally, as required by CPLR § 3215 (f), plaintiff has provided proof of service of the summons with notice, the facts supporting each of

its claims, the default, and the amount due, through the verified pleadings and the affidavit with supporting exhibits of plaintiff's Chief Business Enablement Officer, Alysia Tan, a party with personal knowledge (*see* NYSCEF Doc. No. 8-20). Therefore, the motion for entry of a default judgment is granted.

Accordingly, it is hereby

ORDERED that the motion by plaintiff Lincoln International LLC is GRANTED; and it is further

ORDERED that plaintiff Lincoln International LLC, with their legal representation having an address of attn. Kevin Brown, Mintz & Gold LLP, 600 3rd Ave, Floor 25, New York, NY 10016, is granted a judgment against defendants, Helmsley Spear, LLC, having an address of 599 Lexington Avenue, New York, NY 10022, and Dignity Holdings, LLC, Falcon Pacific Construction/Builders, LLC and Swig Entities, LLC, having an address of 444 Madison Avenue, New York, NY 10022, in the amount of \$\$342,274.99; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendants, in the amount of \$342,274.99, plus interest at the statutory rate of _____ % from the date of April 15, 2021, to the date of this order, as calculated by the Clerk in the amount of \$ _____, together with costs and disbursements in the amount of \$ _____ as taxed by the Clerk upon the submission of an appropriate bill of costs, for the total judgment amount of \$ _____, and that the plaintiff have execution thereof.

This constitutes the decision and order of the court.

7/10/2024
DATE

NICHOLAS W. MOYNE, J.S.C.

DATE

CLERK

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFRR/RFASSIGN		

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: