

**Downtown Special Situations Holdings, LLC v Mills
Dental- Downtown Brooklyn, PLLC**

2024 NY Slip Op 32698(U)

August 1, 2024

Supreme Court, New York County

Docket Number: Index No. 450818/2022

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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DOWNTOWN SPECIAL SITUATIONS HOLDINGS, LLC, DOWNTOWN CAPITAL PARTNERS LLC,	INDEX NO. <u>450818/2022</u>
Plaintiffs,	MOTION DATE <u>04/05/2023</u>
- v -	MOTION SEQ. NO. <u>003</u>
MILLS DENTAL-DOWNTOWN BROOKLYN, PLLC, PROBITY DENTAL, PLLC, ERICA MILLS, AKINTOYE E. OMOYENI	AMENDED DECISION + ORDER ON MOTION¹
Defendants.	
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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101

were read on this motion for DEFAULT JUDGMENT.

Plaintiffs Downtown Special Situations Holdings, LLC (“DSS”) and Downtown Capital Partners LLC (“DCP”) (collectively, “Plaintiffs”) move for default judgment against Defendants Mills Dental-Downtown Brooklyn, PLLC, and Probity Dental, PLLC (collectively, the “LLC Defendants”) pursuant to CPLR § 3215 because they are not represented by counsel and therefore cannot defend themselves in this action, and request an inquest to determine the amount of damages Plaintiffs are entitled to recover from the LLC Defendants.

As relevant here, Plaintiffs commenced this action on September 29, 2021, in the Supreme Court, Westchester County seeking repayment of certain loans Plaintiffs made to Defendants for Dr. Mills’ dental practice (NYSCEF 1). Defendants – including the LLC Defendants – appeared with counsel and filed a Demand to Change Venue to New York County

¹ This Amended Decision and Order only clarifies the nature of the relief requested and the scope of the reference to the Special Referee.

(NYSCEF 10). In March 2022, the action was transferred to New York County (NYSCEF 40–41). Thereafter, Plaintiff filed a motion for default judgment based on Defendants’ alleged failure to file a timely answer. The Court denied this motion on October 18, 2022 (NYSCEF 65). On October 28, 2022, Defendants filed their Answer (NYSCEF 66), and on November 18, 2022, Defendants filed an Amended Answer (NYSCEF 70).

On December 7, 2022, Defendants’ counsel filed an order to show cause seeking to be relieved as Defendants’ counsel (NYSCEF 79). On December 14, 2022, the Court entered a Decision granting the motion to withdraw as counsel and staying this action for a period of 45 days (NYSCEF 83). The 45-day stay of this action expired on January 30, 2023. To date, no new counsel has appeared for the LLC Defendants.

On February 14, 2023, Plaintiffs filed and served a letter seeking a pre-motion conference pursuant to Commercial Division Rule 24(a) for Plaintiffs’ anticipated motion for default judgment against the LLC Defendants resulting from their failure to retain new counsel after the expiration of the stay (NYSCEF 87). On February 16, 2023, the Court entered an Order stating that “Plaintiffs may proceed by filing a motion for default judgment with appropriate notice to Defendants and as a courtesy, to Defendants’ prior counsel” (NYSCEF 88). Plaintiffs thereafter filed this instant motion for default judgment.

Pursuant to CPLR 321(a), a limited liability company is required to be represented by counsel to prosecute or defend a litigation (*see also Michael Reilly Design, Inc. v Houraney*, 40 AD3d 592, 593 [2d Dept 2007]). As such, a limited liability company is subject to a default judgment when the Court relieves the limited liability company’s counsel, and the limited liability company then fails to appear by new counsel after a stay of the action is lifted (*World on Columbus, Inc. v L.C.K. Rest. Group, Inc.*, 260 AD2d 323, 324 [1st Dept 1999]; *Mail Boxes Etc.*

USA, Inc. v Higgins, 281 AD2d 176 [1st Dept 2001]; *Town of Southold v Basso Motors Mfg. & Equip. Repair, LLC*, 2019 NY Slip Op 30839[U], 2 [Sup Ct, Suffolk County 2019]; *Griffin v 1869 Utica Ave. Corp.*, 24 Misc 3d 138(A) [App Term, 2d Dept 2009]).

As noted, the Court stayed this matter for forty-five days to afford all the Defendants sufficient time to retain new counsel. Moreover, even after the stay expired on January 30, 2023, the LLC Defendants has had months to appear through counsel and stand ready to defend this case. To date, the LLC Defendants have not done so.² Plaintiff also submitted an affidavit of service demonstrating that the LLC Defendants and the Individual Defendants were served with the Notice for Default Judgment and supporting papers (NYSCEF 100, 101).

In light of the default, damages as the amount Plaintiffs are entitled to recover from the LLC Defendants shall be determined after an inquest before a JHO/Special Referee.

Accordingly, it is

ORDERED that Plaintiff's motion for a default judgment against Defendants Mills Dental-Downtown Brooklyn, PLLC, and Probity Dental, PLLC is **GRANTED**; it is further

ORDERED that the issue of damages is directed to an Inquest before a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to hear and report to this Court as to the damages Plaintiffs are entitled to recover from the LLC Defendants , and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; 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

² The individual Defendants have also failed to advise the Court if they are proceeding *pro se*.

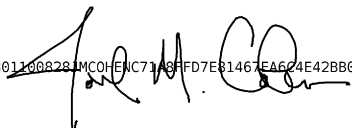
calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/suptctmanh at the “References” link), shall assign this matter at the initial appearance to an available JHO/Special Referee to determine as specified above; and it is further

ORDERED that counsel for plaintiff shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (accessible at the “References” link on the court’s website) 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 parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees 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(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

8/1/2023
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: