SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. EMILY MORALES-MINERVA** **PART** **42M**

Justice

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VERIZON NEW YORK INC.,

Plaintiff,

- v -

880 PACIFIC LOFTS LLC, PK CONTRACTING CORP., RENTOM GROUP CORP.

Defendant.

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INDEX NO. 156909/2023

MOTION DATE 02/28/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17

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

APPEARANCES:

Saul Ewing, LLP, New York, New York (Ryan M. Jerome, Esq., of counsel), for plaintiff.

HON. EMILY MORALES-MINERVA:

In this negligence action, plaintiff VERIZON NEW YORK INC., ("plaintiff") moves, pursuant to CPLR § 3215, for an order granting it a default judgment against defendants 880 PACIFIC LOFTS LLC, PK CONTRACTING CORP., and RENTOM GROUP CORP ("defendants") for their failure to appear. Defendants neither appear nor submit opposition to the motion.

To establish entitlement to a default judgment, plaintiff must file (1) proof it served defendants with the summons and complaint, and (2) "proof of the facts constituting the claim, the default, and the amount due . . . by affidavit made by the

party . . ." (CPLR § 3215 [f]; see also Woodson v. Mendon Leasing Corp., 100 NY2d 62, 70 [providing that "that an applicant for a default judgment file 'proof by affidavit made by the party of the facts constituting the claim'"]; 231st Riverdale LLC v. 7 Star Home Furniture Inc., 198 AD3d 524, 525 [1st Dept 2021]).

In matters of default, where the defendant fails to appear, and the plaintiff does not have the benefit of discovery, the supporting affidavit "need only allege enough facts to enable a court to determine that a viable cause of action exists" (Woodson, 100 NY2d at 70-71 [2003], citing 7 Weinstein-Korn-Miller, NY Civ Prac ¶ 3215.24, at 32-326; see also B&H Flooring, LLC v Folger, 228 AD3d 809 [2d Dept 2024]. "Indeed, defaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them" (Woodson, 100 NY2d at 71, citing Rokina Opt. Co. v Camera King, 63 NY2d 728, 730 [1984]; see also Petty v Law Off. of Robert P. Santoriella, P.C., 200 AD3d 621, 621 [1st Dept 2021] [holding: "[B]y defaulting, a defendant admits all traversable allegations contained in the complaint, and thus concedes liability, although not damages]).

However, "'[s]ome proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action,' but the standard of proof is

'minimal,' and 'not stringent' (Petty, 200 AD3d at 621, quoting Joosten v Gale, 129 AD2d 531, 535 [1st Dept 1987]).

Here, plaintiff met its burden, submitting the affidavit of Michael Concepcion, plaintiff's local construction manager, a copy of the affidavits of service of the summons and complaint, a copy of the notice of default with affidavit of mailings, a copy of the property damage report and a copy of the explanations of charges.

While defendants in default admit "all traversable allegations in the complaint, including the basic allegation of liability, [they do not so] admit the plaintiff's conclusion as to damages" (Rokina, 63 NY2d at 73; see also Arent Fox Kinter Plotkin & Kahn, PLLC v Lurzer Gmbh, 297 AD2d 590, 590 [1st Dept 2002]). Therefore, the Court shall direct an inquest to determine the sum uncertain to the extent demanded in the complaint as "not less than $55,495.98" (NYSCEF Doc. No. 01, complaint at 2); see Chase Manhattan Bank (Nat. Ass'n) v Evergreen Steel Corp., 91 AD2d 539, 539 [1st Dept 1982]).

Finally, as to the attorneys' fees, it is well settled that, "[u]nder the American Rule, a prevailing party in litigation generally may not recover attorney's fees from the losing party" (Sage Sys., Inc. v. Liss, 39 NY3d 27, 29 [2022], citing Hooper Assoc. v AGS Computers, 74 NY2d 487, 491 [1989]). Absent statute, agreement, or contract, containing

"'unmistakably clear' language" permitting a successful party to recovery for attorneys' fees, no such recovery is permissible (Sage Sys, Inc., 39 NY3d at 31, citing Hooper, 74 NY2d at 492).

It is plaintiff's burden to establish entitlement to attorney's fees. Here plaintiff does not address, much less provide support to for their request for attorney's fees. As such, plaintiff's request for attorney's fees is denied in its entirety.

Accordingly, it is,

ORDERED that Plaintiff VERIZON NEW YORK INC.'s motion for a default judgment against defendant's 880 PACIFIC LOFTS LLC, PK CONTRACTING CORP., RENTOM GROUP CORP is granted; and it is further

ORDERED that this matter is adjourned to November 7, 2024 at 10:00AM for an inquest on damages in Part 42, Room 574, at 111 Centre Street New York, NY 10013; and it is further

ORDERED that plaintiff shall serve a copy of this order with notice of entry upon defendants within 15 days of entry, and plaintiff shall file such notice with the Court.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

8/19/2024
DATE

Emily Morales-Minerva
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE