

Island Valet Serv., Inc. v Neighborhood Radiology Servs. PC
2024 NY Slip Op 35469(U)
March 26, 2024
Supreme Court, Nassau County
Docket Number: Index No. 605858/22
Judge: Randy Sue Marber
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAUPresent: **HON. RANDY SUE MARBER**
JUSTICE

IAS PART 2

ISLAND VALET SERVICE, INC.,

X

Plaintiffs,

Index No.: 605858/22
Motion Sequence...01
Motion Date...11/1/23

-against-

NEIGHBORHOOD RADIOLOGY SERVICES PC,

Defendant.

X

Papers Submitted:

Notice of Motion.....x

Upon the foregoing papers, the unopposed motion by the Plaintiff, ISLAND VALET SERVICE, INC., seeking an Order pursuant to CPLR § 3215, granting a default judgment in its favor as against the Defendant, NEIGHBORHOOD RADIOLOGY SERVICES PC, is determined as hereinafter provided.

The Plaintiff alleges that the parties entered into a contract whereby the Plaintiff was to provide the Defendant with valet parking services (*See* Plaintiff's Affidavit, NYSCEF Doc. No. 4). On or about December 9, 2019, the Plaintiff asserts that an invoice for its services ranging from May 5, 2019 through September 22, 2019, was sent to the Defendant, in the amount of \$18,360.00, and said Defendant did not dispute the invoice (*Id.*).

The Plaintiff commenced this action by the filing of a Summons and Verified Complaint on or May 4, 2022 (*See* Summons and Complaint, annexed to Motion as Exhibits “B”). The Plaintiff submits proof that the Defendant was served a copy of the Summons and Verified Complaint on May 23, 2022 (*See* Affidavit of Service, annexed to Motion as Exhibit “B”).

Pursuant to CPLR § 3215, a plaintiff may move for a default judgment against a defendant who fails to answer or otherwise appear in the action within one year of the default. Pursuant to CPLR § 3215 (f), the movant must provide: (i) proof of service of the summons and complaint; (ii) an affidavit by the party setting forth the facts constituting the claim; (iii) proof of the default and/or amount due.

The instant application was filed on August 18, 2023, over one year after the default. The Plaintiff avers that its delay in seeking the instant application was due to the Defendant filing for Bankruptcy and that the Bankruptcy proceeding is now dismissed (*See* Affirmation, NYSCEF Doc. No. 3). The Court notes that the notice of dismissal, CDP HOLDING GROUP, LLC, Case No. 1:22bk41392, provided by the Plaintiff is not for the named Defendant (*See* Bankruptcy Dismissal, annexed to the Motion as Exhibit “C”). In any event, the named Defendant’s Bankruptcy action, Case No. 1:22bk41394, is also dismissed. As such, the Plaintiff proffered a reasonable excuse for the delay and a meritorious defense.

A copy of the Summons and Verified Complaint was duly served upon the Defendant pursuant to the CPLR. While the Plaintiff submitted a sworn affidavit from an agent of ISLAND VALET SERVICE, INC., Mark Baron, setting forth the facts

constituting the claim, the Plaintiff has failed to provide the underlying Contract pursuant to which the Plaintiff seeks a money judgment. The only document proffered is an invoice for services allegedly rendered. The Plaintiff failed to provide any document signed by the Defendant which binds the Defendant to perform any specific obligation. Insofar as this is an action for breach of a purported contract, the Court cannot grant the Plaintiff a money judgment for a sum certain as there is no proof that a contract exists.

In light of the aforementioned issues concerning the failure to proffer a binding contract, this matter shall be set down for an Inquest to assess the appropriate amount of damages to be awarded to the Plaintiff, if any.

Accordingly, it is hereby

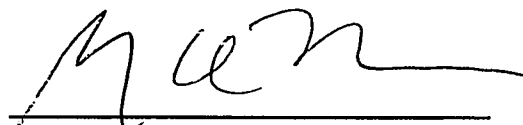
ORDERED, that this matter shall be set down for an Inquest, subject to the approval of the Justice there presiding and provided a Note of Issue has been filed at least ten (10) days prior thereto, in Part 2 on June 3, 2024 at 2:30 p.m., which shall be held IN PERSON, to assess the appropriate sum to be awarded to the Plaintiff and the amount due, if any; and it is further

ORDERED, that the Plaintiff's counsel shall serve a copy of this Order with Notice of Entry upon the Defendant at its last known address, by certified mail, return receipt requested, AND by regular mail within ten (10) days of the date of entry of this Order. **PROOF OF SERVICE MUST BE FILED WITH THE COURT**; and it is further

ORDERED, that a copy of this Order shall be served on the Calendar Control Part along with the Note of Issue. The failure to file a Note of Issue as directed or appear as directed may be deemed an abandonment of the claims giving rise to the Inquest.

This constitutes the decision and Order of this Court.

DATED: Mineola, New York
March 26, 2024



Hon. Randy Sue Marber, J.S.C.

ENTERED

Mar 27 2024

NASSAU COUNTY
COUNTY CLERK'S OFFICE