

**MDEV10 LLC v JDS Monad Terrace LLC**

2025 NY Slip Op 30491(U)

February 7, 2025

Supreme Court, New York County

Docket Number: Index No. 656554/2021

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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MDEV10 LLC, ACK SCH MONAD INVESTOR LLC,  
ACKERMD MONAD INVESTOR LLC,

Plaintiffs,

- v -

JDS MONAD TERRACE LLC, JDS MONAD TERRACE  
DEVELOPER LLC, JDS CONSTRUCTION SERVICES  
LLC, JDS CONSTRUCTION GROUP LLC, MONAD  
TERRACE JV LLC, MONAD TERRACE INVESTMENT  
LLC, MONAD TERRACE MANAGER LLC, MONAD  
MANAGER LLC, MONAD TERRACE LLC, MONAD  
TERRACE MEZZ LLC, MONAD TERRACE PROPERTY  
OWNER LLC

Defendants.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 009) 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327

were read on this motion for

DEFAULT JUDGMENT

Defendants JDS Monad Terrace LLC, JDS Monad Terrace Developer LLC, JDS Construction Services LLC, JDS Construction Group LLC, and Monad Terrace JV LLC (collectively, “defendants”) moves for an Order (i) dismissing the second amended complaint (NYSCEF 267 [the “SAC”]) of plaintiffs MDEV10 LLC (“MDEV”), ACK-SCH Monad Investor, LLC (“ACK”), and ACKERMD Monad Investor LLC (“ACKERMD”; collectively, “Plaintiffs”) pursuant to CPLR 321(a) and 3215(a), as a result of Plaintiffs’ failure to retain counsel by the December 5, 2024 deadline set by order dated October 22, 2024, and entered on October 24, 2024 (NYSCEF 309), and extended by court notice dated and entered on November 20, 2024 (NYSCEF 312); and (ii) awarding JDS Monad Terrace LLC its attorneys’ fees, costs,

and expenses in an amount to be determined following further submissions. This unopposed motion is granted.

Plaintiffs – each a limited liability company – commenced this action on November 17, 2021, by filing a summons with notice, and then a complaint on December 7, 2021 (NYSCEF 11, 95). The SAC was filed on June 9, 2023 (NYSCEF 267). Plaintiffs allege direct causes of action and derivative causes of action on behalf of nominal defendants (Monad Terrace JV LLC, Monad Terrace Investment LLC, Monad Terrace Manager LLC, Monad Manager LLC, Monad Terrace LLC, Monad Terrace Mezz LLC, Monad Terrace Property Owner LLC) related to a real estate development in Miami, Florida (the “Project”). By order dated August 2, 2024 and entered August 5, 2024 (NYSCEF 299), this Court dismissed plaintiffs’ eighth and ninth causes of action, and dismissed portions of the fifth and sixth causes of action for declaratory judgment (NYSCEF 299). Thereafter, defendants answered the SAC and asserted counterclaims for their attorneys’ fees pursuant to the fee-shifting provisions of the Project’s governing agreements (NYSCEF 302).

On October 8, 2024, plaintiffs’ counsel (Blank Rome LLP) moved by order to show cause for leave to withdraw as counsel, which was granted by order dated October 22, 2024 (NYSCEF 309 [the “October 22 Order”]). The October 22 Order directed plaintiffs to “appoint substitute counsel within thirty (30) days from the date of this order,” expressly indicating that failure to do so could result in “default.” (*id.*) Plaintiffs had until November 21, 2024, to retain new counsel. That date was adjourned to December 5, 2024, after MDEV’s principal wrote to the Court on November 20 to request additional time to locate replacement counsel (NYSCEF 312). That extended deadline came and went with no indication that Plaintiffs had retained counsel

(and the same is true as of this writing, more than *two months* after the extended deadline).

Defendants accordingly moved for a default judgment.

“Pursuant to CPLR 321(a), a limited liability company is required to be represented by counsel to prosecute or defend a litigation” (*Downtown Special Situations Holdings, LLC v Mills Dental-Downtown Brooklyn, PLLC*, 2024 NY Slip Op 32698[U], 2 [Sup Ct, NY County 2024]).

“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” (*id.* [collecting cases]). Moreover, Plaintiffs’ derivative claims present a separate need for counsel, even if this action had been brought in the name of an individual rather than an LLC.

As noted, the Court stayed this matter for thirty days to afford the Plaintiffs sufficient time to retain new counsel. Moreover, even after the stay expired, the Court granted an additional 14-day extension at the request of MDEV’s principal. Plaintiffs have had *months* to appear through counsel and stand ready to prosecute this case but have not done so. Defendants submitted an affidavit of service demonstrating that the Plaintiffs were served with the Notice for Default Judgment and supporting papers (NYSCEF 327). Accordingly, a default judgment is appropriate.

In addition, Defendants’ request for attorneys’ fees is granted. The remaining claims at issue in the case are: (a) the first through fourth, sixth, and seventh causes of action, all asserted by MDEV and/or ACK against JDS Monad under the “Original GP Agreement” and/or the “Amended GP Agreement”; and (b) the fifth cause of action, asserted by ACKERMD against the GP JV under the “Ackerman Agreement.” Each of those agreements provides that the “prevailing party” in any litigation “arising as a result of or by reason of” the agreement shall be

entitled to an award of reasonable attorneys’ fees, costs and expenses incurred in connection with resolving this action (see NYSCEF 324 at 37, § 13.16; NYSCEF 325 at 41, § 13.16; and NYSCEF 326 at 37, § 13.16). Because JDS Monad and the GP JV are the “prevailing parties” within the meaning of these provisions, they are entitled to recover their reasonable attorneys’ fees, costs, and expenses in an amount to be determined by the Court.

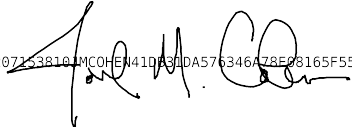
Accordingly, it is

**ORDERED** that Defendants’ motion for default judgment against Plaintiffs is **GRANTED**, and the Clerk of Court is hereby directed to enter judgment against Plaintiffs in favor of Defendants dismissing the Second Amended Complaint; it is further

**ORDERED** that Defendants shall file their application for reasonable attorneys’ fees, costs and expenses incurred in connection with resolving this action, with supporting documentation, within fourteen (14) days of the date of this Order; Plaintiffs may submit any objections within fourteen (14) days thereafter; and it is further

**ORDERED** that Defendants shall serve a copy of this Order upon Plaintiffs with notice of entry within five (5) days of the date of this Order.

This constitutes the decision and order of the Court.

<u>2/7/2025</u> <b>DATE</b>	 <small>20250207153819MCOHEN410031DA576346A78E98165F559B47EA</small> <b>JOEL M. COHEN, J.S.C.</b>	
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE