

Ying Wee Corp. v Poetica Coffee Inc.

2025 NY Slip Op 32886(U)

July 24, 2025

Supreme Court, New York County

Docket Number: Index No. 652847/2024

Judge: Judy H. Kim

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JUDY H. KIM PART 04

Justice

-----X

YING WEE CORP.,

Plaintiff,

- v -

POETICA COFFEE INC., PARVIZ MUKHAMADKULOV,

Defendants.

-----X

INDEX NO. 652847/2024

MOTION DATE 02/12/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15

were read on this motion for JUDGMENT - DEFAULT.

Upon the foregoing documents, Ying Wee Corp.’s motion for a default judgment is granted on default and for the reasons set forth below.

Plaintiff owns the building located at 390-394 Broome Street, New York, New York 10013. On February 23, 2022, plaintiff and defendant Poetica Coffee Inc. (“Poetica”) entered into an Agreement of Lease (the “Lease”) in which Poetica leased “the middle store in the building,” inclusive of the “outdoor area and cellar space below the middle store” (the “Premises”) (NYSCEF Doc No. 10, lease). Contemporaneously with the execution of the Lease, Poetica’s President, Parviz Mukhamadkulov executed a personal guaranty guaranteeing Poetica’s performance under the Lease (the “Guaranty”) (NYSCEF Doc No. 11, guaranty).

On or about October 2023, non-party Namel Norris filed a lawsuit against plaintiff and Poetica in the United States District Court for the Southern District of New York, asserting that Poetica failed to comply with accessibility requirements under the Americans with Disabilities Act (the “ADA Lawsuit”) (NYSCEF Doc No. 1, complaint at ¶7). Poetica failed to appear or answer

in the lawsuit (*id.* at ¶9). On March 12, 2024, plaintiff settled the ADA Lawsuit for \$18,500.00 (*id.* at ¶11).

On February 1, 2024, Poetica vacated and surrendered the Premises to plaintiff (*id.* at ¶5). On March 1, 2024, plaintiff rented the Premises to a new party. Plaintiff then commenced this breach of contract action on June 4, 2024, seeking damages against Poetica and Mukhamadkulov, jointly and severally, for unpaid rent and additional rent and attorney's fees, as well as for indemnification of its costs incurred in connection with the settlement of the ADA lawsuit, pursuant to section 15 of the Lease (*id.* at 6). Defendants have not answered or otherwise appeared in this case.

DISCUSSION

In order to establish its entitlement to a default judgment pursuant to CPLR 3215, movant must submit proof of: (1) service of the summons and complaint; (2) the facts constituting the claim; and (3) defendant's default in answering or appearing (*see Gordon Law Firm, P.C. v Premier DNA Corp.*, 205 AD3d 416, 416 [1st Dept 2022]). Additionally, CPLR 3215(g)(4) mandates that where service of process has been effected through the New York Secretary of State, plaintiff must also submit an affidavit of service documenting an additional service of the summons to defendant's last known address by first-class mail (*see e.g., Sterk-Kirch v Uptown Communications & Elec. Inc.*, 124 AD3d 413, 414 [1st Dept 2015]).

Plaintiff has established that service was effected on Poetica through the New York State Secretary of State on July 24, 2024 (NYSCEF Doc No. 3), with an additional mailing of the summons and complaint to Poetica's last known address by first-class mail on February 3, 2025 (NYSCEF Doc No. 7 at 3) and on Mukhamadkulov, pursuant to CPLR 308(2) on June 25, 2024 (NYSCEF Doc No. 2) and that defendants have defaulted (*see* NYSCEF Doc No. 5, Gee affirm.).

Plaintiff has also provided proof of the facts constituting its breach of contract claims through its submission of the Lease, Guaranty, the new lease with plaintiff's replacement tenant and the affirmation of Brian Chin, a managing agent for plaintiff, attesting that defendants' unpaid rent arrears at the time of the motion's filing on February 12, 2025, after accounting for rent from the re-let premises, totals \$20,654.73 (*see Pampillonia v Montague Urgent Med. Care, P.C.*, 2020 NY Slip Op 30489[U], *2 [Sup Ct, NY County 2020]). To the extent plaintiff seeks to immediately recover all future rent that will become due under the Lease (less the net rent recovered from reletting the premises), the Lease does not include an acceleration clause that would render defendants liable for rent that has not yet accrued (*see 3rd & 60th Assoc. Sub LLC v Zavolunov*, 223 AD3d 488, 491 [1st Dept 2024]). However, plaintiff is entitled to unpaid rent and additional rent which accrued while this motion was sub judice and the determination of this amount is referred to a Special Referee.

Plaintiff has also established that, pursuant to sections 12 and 15 of the Lease, it is entitled to a judgment in the sum of \$18,500.00 as indemnification for its settlement of the ADA Lawsuit (*see K.L.M.N.I., Inc. v 483 Broadway Realty*, 117 AD3d 654, 655 [1st Dept 2014]).

Finally, plaintiff is entitled to attorneys' fees, pursuant to section 19.01 of the lease and section c(vi) of the Guaranty. However, as it has not provided any evidence documenting the amount of reasonable attorneys' fees it seeks, the amount of such fees is also referred to a Special Referee to hear and report.

Accordingly, it is

ORDERED that plaintiff's motion for a default judgment is granted; and it is further

ORDERED that, as to plaintiff's first cause of action, plaintiff is granted a judgment against Poetica Coffee Inc. and Parviz Mukhamadkulov, jointly and severally in the amount of

\$18,500.00 with interest at the statutory rate from March 12, 2024, until the date of entry of this judgment, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that as to plaintiff's second cause of action, plaintiff is granted a judgment against Poetica Coffee Inc. and Parviz Mukhamadkulov, jointly and severally, in the amount of \$20,654.73—accounting for unpaid rent and additional rent outstanding as of January 31, 2024—with interest at the statutory rate from January 31, 2024 until the date of entry of this judgment, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that a JHO or Special Referee shall be designated to hear and determine the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

(i) the total amount of damages due and owing by Poetica Coffee Inc. and Parviz Mukhamadkulov under the Lease and Guaranty from January 31, 2024 through the date of this decision and order; and

(ii) plaintiff's reasonable attorneys' fees; 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; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that plaintiff's counsel shall serve a copy of this order with notice of entry on defendants within five days and that counsel for plaintiff shall, after thirty days from service of those papers, submit to the Special Referee Clerk by fax or email an Information Sheet containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the plaintiff 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 referenced 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

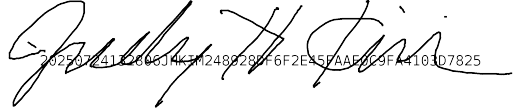
ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issues specified above shall proceed from day to day until completion; and it is further

ORDERED that plaintiff shall, within twenty days from the date of this decision and order, serve a copy of this decision and order, with notice of entry, on defendant as well as the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website); and it is further

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the decision and order of the court.



652847/2024 YING WEE CORP. vs. POETICA COFFEE INC. ET AL Motion No. 001

7/24/2025

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE