

City of New York v 512 Ryder Ave., LLC

2025 NY Slip Op 33266(U)

September 2, 2025

Supreme Court, New York County

Docket Number: Index No. 453012/2024

Judge: Emily Morales-Minerva

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. EMILY MORALES-MINERVA PART 42M

Justice

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INDEX NO. 453012/2024

THE CITY OF NEW YORK, THE NEW YORK CITY WATER BOARD

MOTION DATE 06/29/2025

Plaintiffs,

MOTION SEQ. NO. 001

- v -

512 RYDER AVENUE, LLC,

DECISION + ORDER ON MOTION

Defendant.

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

were read on this motion to/for JUDGMENT - DEFAULT

APPEARANCES:

Wilson, Elser, Moskovitz, Edelman & Dicker, LLP, White Plains, New York (William James Cortellessa, Esq., of counsel) for plaintiffs.

HON. EMILY MORALES-MINERVA:

In this action, plaintiffs THE CITY OF NEW YORK and THE NEW YORK CITY WATER BOARD, move, by notice of motion (seq. no. 001), pursuant to CPLR § 3215, for an order granting it a default judgment against defendant 512 RYDER AVENUE, LLC in the amount of \$124,845.18. Defendant does not appear or submit opposition to the motion.

BACKGROUND

Plaintiffs THE CITY OF NEW YORK and THE NEW YORK CITY WATER BOARD provide water and wastewater services to defendant 512 RYDER AVENUE, LLC, for the property located at 512 Ryder Avenue, Brooklyn, New York 11230 (premises) (see New York State Courts Electronic Filing System [NYSCEF] Doc. No. 01, Complaint). Plaintiffs bill for the water and wastewater charges incurred by defendant, and send invoices to defendant on a monthly basis (see id.; see also NYSCEF Doc. No. 02, Defendant's Water Bill).

On November 12, 2024, plaintiffs commenced this action to recover \$124,845.18 in unpaid water and wastewater charges incurred by defendant at the premises (see NYSCEF Doc. No. 01, Complaint). The complaint alleges causes of action sounding in account stated and unjust enrichment, and seeks damages in the amount of \$124,845.18, plus interest at the statutory rate from October 08, 2024 (id.). Plaintiffs further seek an award of attorneys' fees.

On December 04, 2024, plaintiffs served the summons and complaint upon defendant pursuant to section 303 of the Limited Liability Company Law¹ (see NYSCEF Doc. No. 004, Notarized

¹ Section 303 of the Limited Liability Company Law provides, as relevant here, (a) Service of process on the secretary of state as agent of a domestic limited liability company or authorized foreign limited liability company shall be made in the manner provided by paragraph one or two of this subdivision. . . . (1) Personally delivering to and leaving with the secretary of state or his or her deputy, or with any person authorized by the secretary of state to receive such service, at the office

Affidavit of Service - Secretary of State, dated December 04, 2024). On December 16, 2024, plaintiffs provided defendant with additional service of the summons and complaint pursuant to CPLR § 3215 (g)(4)² (see NYSCEF Doc. No. 005, Affirmation of Service, dated December 16, 2024). To date, defendant has not appeared, answered, or otherwise moved against the complaint, and defendant's time to do so has expired.

ANALYSIS

When a defendant fails "to appear, plead or proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed, the plaintiff may seek a default judgment against [the defendant]"

of the department of state in the city of Albany, duplicate copies of such process together with the statutory fee, which fee shall be a taxable disbursement. Service of process on such limited liability company shall be complete when the secretary of state is so served. The secretary of state shall promptly send one of such copies by certified mail, return receipt requested, to such limited liability company at the post office address on file in the department of state specified for that purpose" (see also CPLR § 311-a).

² CPLR § 3215 (g)(4) provides, "(i) When a default judgment based upon non-appearance is sought against a domestic or authorized foreign corporation which has been served pursuant to paragraph (b) of section three hundred six of the business corporation law, an affidavit shall be submitted that an additional service of the summons by first class mail has been made upon the defendant corporation at its last known address at least twenty days before the entry of judgment.

(ii) The additional service of the summons by mail may be made simultaneously with or after the service of the summons on the defendant corporation pursuant to paragraph (b) of section three hundred six of the business corporation law, and shall be accompanied by a notice to the corporation that service is being made or has been made pursuant to that provision. An affidavit of mailing pursuant to this paragraph shall be executed by the person mailing the summons and shall be filed with the judgment. Where there has been compliance with the requirements of this paragraph, failure of the defendant corporation to receive the additional service of summons and notice provided for by this paragraph shall not preclude the entry of default judgment."

(CPLR § 3215 [a]). To establish entitlement to a default judgment, plaintiff must file (1) proof it served defendant 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 [2003] [providing that "an applicant for a default judgment [must] 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]; Feffer v Malpeso, 210 AD2d 60 [1st Dept 1994]).

In matters of default, where "the defendant fail[s] 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, 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, plaintiffs have met their burden, submitting the affidavit of Kayetrina Murchison, the Director of Legal Services in the Bureau of Customer Services (BCS) of the Department of Environmental Protection (DEP) for plaintiffs (NYSCEF Doc. No. 12)³; a copy of defendant's outstanding water and wastewater bill, illustrating the services provided, the water and wastewater charges, and an outstanding balance of \$124,845.18 (NYSCEF Doc. No. 02); and a deed for the premises, demonstrating defendant's ownership of such (NYSCEF Doc. No. 11, Deed).

Plaintiffs also submit the affidavit of service of the summons and complaint (NYSCEF Doc. Nos. 04 and 09), the affirmation of additional service of the summons and complaint in accordance with CPLR § 3215 (g) (4) (NYSCEF Doc. Nos. 05 and 10), and proof of defendant's default (NYSCEF Doc. No. 07, Affirmation of Marc J. Gross, Esq., ¶ 12).

³ The DEP operates the water and sewer system of plaintiffs, and is responsible for establishing rates and collecting payments from customers (see NYSCEF Doc. No. 001, Complaint, and Doc. No. 12, affidavit of Kayetrina Murchison).

As to 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 . . . unless an award is authorized by agreement between the parties, statute or court rule" (Sage Sys., Inc. v Liss, 39 NY3d 27, 29 [2022], citing Hooper Assoc. v AGS Computers, 74 NY2d 487, 491 [1989]).

Pursuant to Section 1045-j of the Public Authorities Law, which governs the imposition and disposition of sewer and water rates and charges,

"Such fees, rates, rents or other charges, if not paid when due, shall constitute a lien upon the premises served and a charge against the owners thereof, which lien and charge shall bear interest at the same rate as would unpaid taxes of the city. Such lien shall take precedence over all other liens or encumbrances, except taxes, and may be foreclosed against the lot or building served in the same manner as a lien for such taxes. The amount which remains due and unpaid for sixty days may, with interest thereon at the same rate as unpaid city taxes and with reasonable attorneys' fees, be recovered by the water board in a civil action in the name of the water board against such owners"

(Public Authorities Law § 1045-j[5] [emphasis added]). Therefore, Plaintiffs' request for attorneys' fees is granted, and the court shall direct a hearing to determine said amount.

Accordingly, it is hereby

ORDERED that plaintiffs' motion (seq. no. 001) for a default judgment is granted; it is further

ORDERED and ADJUDGED that the Clerk of Court is directed to enter judgment in favor of plaintiffs THE CITY OF NEW YORK and THE NEW YORK CITY WATER BOARD and against defendant 512 RYDER AVENUE, LLC in the principal amount of \$124,845.18, with interest at the statutory rate from October 08, 2024, and with costs and disbursements as calculated by the Clerk of Court; it is further

ORDERED that, within twenty days from the date of this decision and order, plaintiffs shall serve a copy of this order on defendants, as well as on the Clerk of the Court, who shall enter judgment accordingly; it is further

ORDERED that a hearing on plaintiffs' claim for attorneys' fees shall be held on December 15, 2025, at 12:00 P.M., in Courtroom 574, located at 111 Centre Street, New York County Supreme Court; and it is further

ORDERED that the Clerk of Court shall mark the file accordingly.

9/03/2025
DATE

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

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE