

City of New York v 2329 Arthur Ave LLC

2025 NY Slip Op 33413(U)

September 9, 2025

Supreme Court, New York County

Docket Number: Index No. 451006/2024

Judge: Emily Morales-Minerva

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This opinion is uncorrected and not selected for official publication.

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. 451006/2024

CITY OF NEW YORK

MOTION DATE 03/10/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

2329 ARTHUR AVE LLC,

DECISION + ORDER ON
MOTION

Defendant.

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

were read on this motion to/for JUDGMENT - DEFAULT

APPEARANCES :

LINEBARGER GOGGAN BLAIR & SAMPSON, LLP (Maria Cristina Gonzalez, Esq. and Spencer Thomas McCord, Esq.) for plaintiff.

HON. EMILY MORALES-MINERVA, J.S.C.

In this action seeking enforcement of a civil penalty, plaintiff CITY OF NEW YORK moves, by notice of motion (mot. seq. no. 001), for entry of a default judgment against defendant 2329 ARTHUR AVE LLC, pursuant to CPLR § 3215, in the amount of \$50,000.00 plus costs and disbursements. Defendant does not appear or submit opposition.

As explained below, the Court grants the motion entirely.

BACKGROUND

2329 ARTHUR AVE LLC (defendant) owns residential property located at 2329 Arthur Avenue, Bronx County. On July 20, 2022, the New York City Department of Buildings (DOB) issued Environmental Control Board (ECB) summons no. 039066341N, citing defendant for unlawful occupancy in violation of the New York City Administrative Code. The DOB alleged that the premises, legally approved as a two-family dwelling, had been unlawfully converted to a four-family dwelling -- an occupancy exceeding the authorized number of families (see NYSCEF Doc. No. 008, ECB Summons and Decision). A hearing was held on January 13, 2023, before the Office of Administrative Trials and Hearings (OATH), at which the defendant appeared and contested the violation (see NYSCEF Doc No. 008, ECB Summons and Decision). The matter was heard and the defendant appeared telephonically. OATH dismissed the violation (see NYSCEF Doc No. 006, Affidavit in support of motion).

Plaintiff appealed. On July 27, 2023, by decision and order, the OATH Appeals Division reversed the dismissal and imposed a civil penalty of \$50,000.00 against defendant (see NYSCEF Doc No. 008, Appeals Division Decision dated July 27, 2023). However, plaintiff alleges that to date, defendant has

failed to remit payment (see NYSCEF Doc. No. 006, Affidavit in support of motion).

On April 03, 2024, plaintiff commenced this enforcement action against defendant (see NYSCEF Doc No. 001, Summons and Complaint). Plaintiff effectuated service on defendant through the Secretary of State, pursuant to Business Corporation Law § 306 [or section 303 of the Limited Liability Company Law], as set forth in the affidavit of service (see NYSCEF Doc No. 004, Affidavit of Service). Defendant has not appeared in the action or submitted an answer.

Plaintiff now moves, by notice of motion (seq. no. 001), against defendant for a default judgment of a sum certain in the amount of \$50,000.00 together with costs and disbursements (see CPLR § 3215). Plaintiff submits proof of service of the subject motion, by the Secretary of State, and proof of additional mailing of service upon the defendant (see NYSCEF Doc No. 006, Affidavit in Support of Motion; see also NYSCEF Doc. No. 007, Affidavit of Service). Defendant submits no response.

ANALYSIS

Plaintiff has not established entitlement to a default judgment, pursuant to CPLR § 3215. Section 3215 (a) of the CPLR is clear: "When a defendant has failed 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 [them]" (CPLR § 3215 [a]).

To obtain such a judgment, the proponent shall file proof of (1) service of the summons and complaint, of (2) the facts constituting the claim, and of (3) the default and the amount due (see CPLR § 3215 [f]). Further, were as here, a non-appearing defendant is a limited liability corporation, the movant for a default judgment must also submit "an affidavit [of] additional service of the summons by first class mail [on] defendant at its last known address at least twenty days before the entry of judgment" (CPLR § 3215 [g] [4]; see Momentum Telecom, Inc. v Velocity Wireless, LLC, 2024 WL 844824 [Sup Ct, NY Cnty 2024] [L. Nock, J.S.C.] [holding that "the court adheres to its prior decision denying the motion for a default judgment for failure to comply with the additional notice provisions of CPLR § 3215 [g] [4]" because "the additional notice requirements for corporations served through the Secretary of State apply with equal force to limited liability companies"], citing Crespo v A.D.A. Mgt., 292 AD2d 5, 10 [1st Dept 2002]).

Here, the City of New York effectuated service on defendant 2329 ARTHUR AVE LLC. via the Secretary of State on April 15, 2024 (NYSCEF Doc. No. 004). However, while the City affirms

that it complied with the additional notice requirements -- by mailing of the summons to 18 Kenilworth Avenue, Staten Island, New York 10312 -- and attests that this address is defendant's last known address (see NYSCEF Doc No. 007, Affidavit of Service; see also NYSCEF Doc No. 11, Affirmation of Service of Motion). Thereby, the additional mailing requirement has been met.

Further, CPLR § 3215 (f) requires an affidavit by a person with knowledge setting forth "proof of the facts constituting the claim", or a verified complaint. "A complaint verified by counsel amounts to no more than an attorney's affidavit, and is insufficient to support entry of default judgment" (Feffer v Malpeso, 210 AD2d 60, 60 [1st Dept 1994]; see also Gaviola v City of New York, 234 AD3d 525 [1st Dept 2025]).

Here, plaintiff have met their burden, submitting the affidavit of Tasminara Mitu, who works as a Supervisor in the Penalty Processing Unit for OATH (see NYSCEF Doc. No. 10. Affidavit of Facts). Therefore, an affidavit of a person with personal knowledge of the facts constituting the claim has been filed.

Accordingly, it is hereby

ORDERED that plaintiff the CITY OF NEW YORK's motion (seq. no. 001), pursuant to CPLR § 3215, for a default judgment is granted; and it is further

ORDERED that the Clerk of Court is directed to enter judgment in favor of plaintiff THE CITY OF NEW YORK and against defendant 2329 ARTHUR AVE LLC in the principal amount of \$50,000.00, plus costs and disbursements as calculated by the Clerk of Court; it is further

ORDERED that, plaintiff the CITY OF NEW YORK shall serve this decision and order with notice of entry on defendant within twenty days of such entry and file proof of the same with the Clerk of Court; and it is further

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

9/9/2025
DATE


EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

APPLICATION:

CHECK IF APPROPRIATE:

OTHER

REFERENCE