

12 W. 17th St. Tenants' Corp. v Le Conte Sucre Corp.

2025 NY Slip Op 33420(U)

September 11, 2025

Supreme Court, New York County

Docket Number: Index No. 659144/2024

Judge: Emily Morales-Minerva

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claim, the default and the amount due . . . by affidavit of the party" or by "verified complaint" with an affidavit as to the default made by the party or party's attorney (CPLR § 3215 [f]; see also Woodson v Mendon Leasing Corp., 100 NY2d 62, 70 [2003]; Gordon Law Firm, P.C. v Premier DNA Corp., 205 AD3d 416, 416 [1st Dept 2022]).

As a defaulting defendant fails to appear and "the plaintiff does not have the benefit of discovery, the affidavit or verified complaint need only allege enough facts to enable a court to determine that a viable cause of action exists" (Woodson, 100 NY2d at 70-71). Indeed, it is well settled that "defaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them" (id., citing Rokina Opt. Co. v Camera King, 63 NY2d 728, 730 [1984]; see also Martino v Chenel Capital, LLC, 235 AD3d 498, 499 [1st Dept 2025] [applying the same principle]; HF Mgt. Servs, LLC v Dependable Care, LLC, 198 AD3d 457, 457 [1st Dept 2021] [applying the same principle]).

Proof of service on a natural person includes an affidavit of service attesting to delivery of the summons in compliance with CPLR § 308. Proof of service on a corporation, shall include an affidavit of service, pursuant to Business Corporations Law § 306, providing for, among other things,

service of process on the secretary of state as an agent of a corporation.¹

Further:

"When a default judgment based on nonappearance is sought [as here] against a natural person in an action based upon nonpayment of a contractual obligation, an affidavit shall be submitted that additional notice has been given by or on behalf of the plaintiff at least 20 days before the entry of judgment, by mailing a copy of the summons by first-class mail to the defendant at [their] place of residence in an envelope bearing the legend 'personal and confidential' and not indicating on the outside that the communication is from an attorney or concerns an alleged debt"

¹ Section 306 of the Business Corporation Law provides: "(a) Service of process on a registered agent may be made in the manner provided by law for the service of a summons, as if the registered agent was a defendant.

(b)(1) Service of process on the secretary of state as agent of a domestic or authorized foreign corporation shall be made in the manner provided by clause (i) or (ii) of this subparagraph. Either option of service authorized pursuant to this subparagraph shall be available at no extra cost to the consumer. (i) Personally delivering to and leaving with the secretary of state or a deputy, or with any person authorized by the secretary of state to receive such service, at the office 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 corporation 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 corporation, at the post office address, on file in the department of state, specified for the purpose. If a domestic or authorized foreign corporation has no such address on file in the department of state, the secretary of state shall so mail such copy, in the case of a domestic corporation, in care of any director named in its certificate of incorporation at the director's address stated therein or, in the case of an authorized foreign corporation, to such corporation at the address of its office within this state on file in the department. (ii) Electronically submitting a copy of the process to the department of state together with the statutory fee, which fee shall be a taxable disbursement, through an electronic system operated by the department of state, provided the domestic or authorized foreign corporation has an email address on file in the department of state to which the secretary of state shall email a notice of the fact that process has been served electronically on the secretary of state. Service of process on such corporation shall be complete when the secretary of state has reviewed and accepted service of such process. The secretary of state shall promptly send a notice of the fact that process has been served to such corporation at the email address on file in the department of state, specified for the purpose and shall make a copy of the process available to such corporation. (2) An additional service of the summons may be made pursuant to paragraph four of subdivision (f) of section thirty-two hundred fifteen of the civil practice law and rules.

...."

(CPLR § 3215 [g] [3] [i] [emphasis added]).

Similarly, where a default judgment is sought, as here, against a corporation, the proponent must also submit proof that either -- simultaneous with service, pursuant to CPLR § 306, or after such service -- they executed "additional service of the summons [on the corporation] by first class mail" at the corporation's "last known address" (CPLR § 3215 [g] [4] [i] [emphasis added]; BCL § 306 [2]).

Here, plaintiff submits proof of service of in-hand delivery of the summons with notice on defendants Jaemin Koo and Moon Ho Lee (see NYSCEF Doc. No. 28, affirmation of service, received March 11, 2025, and Doc. No. 29, affirmation of service, received March 11, 2025). However, plaintiff submits no proof of additional notice on these natural persons which is required as this case involves a nonpayment of a contractual obligation (see CPLR § 3215 [g] [3] [i]).

Plaintiff submits an affidavit of additional service on defendant corporation, entitled "affidavit of service by mail" (see NYSCEF Doc. No. 16, dated February 07, 2025). However, said affidavit does not comply with CPLR § 3215 (g) (4) (i).

It contains only the following substantive language as to delivery of the summons and notice:

"[D]eponent served the within NOTICE
PURSUANT TO CPLR § 3215 (g) (4) with a copy

of the SUMMONS WITH NOTICE . . . upon Defendant Le Conte Sucre Corp. upon the address of said party as set forth for that purpose by mailing a true copy of the same enclosed by First Class Mail in a postpaid, properly addressed envelope . . .

"The address for said mailing is:

Le Conte Sucre Corp.
271 5th Avenue
New York, New York 10016"

(id. [emphasis added]).

The deponent does not attest to having mailed the summons and notice to defendant corporation's "last known address" (id.). In any event, a conclusory statement of a corporation's "last known address" would be insufficient absent language substantiating the source of that knowledge.

Further, plaintiff purports to have served the "amended notice of motion for default judgment" on all defendants -- natural and entity -- in a single affidavit which states:

"[D]eponent served . . . defendants Le Conte Sucre Corp., Jaemin Koo, and Moon Ho Lee upon the addresses as set forth for that purpose by mailing . . . by Priority Mail in postpaid, properly addressed envelopes"

(NYSCEF Doc. No. 34, Affidavit of Service by Mail, dated March 11, 2025). Therein, using a similarly conclusory tone, the affidavit lists four addresses without attesting to the relationship of each address to each defendant (id.).

As relevant to the question of defendant corporation's last known address, plaintiff's affidavit of service of the amended complaint, identifies two addresses for LE CONTE SUCRE CORP. "as set forth for th[e] purpose" of service (id.). Those addresses are: "271 5th Avenue, New York, New York 10006" and "12 West 17th Street, New York, New York 10011" (id.). It is simply unclear what, if any, address is defendant corporation's last known address.

Finally, no affidavit provides what, if any, are the "place[s] of residence" of defendant natural persons (see CPLR § 3215 [g] [3] [i] [governing additional notice when a default judgment is sought against a natural person in an action involving nonpayment of a contractual obligation]).

Accordingly, it is


ORDERED that plaintiff's motion (seq. no. 001) is denied; it is further

ORDERED that plaintiff shall serve a copy of this order with notice of entry on all defendants within 15 days of such entry and shall file proof of such service with the Court; and it is further

ORDERED that the Clerk of Court mark the file accordingly.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

9/11/2025
DATE


EMILY MORALES-MINERVA, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED SETTLE ORDER SUBMIT ORDER OTHER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE