

3 Times Sq. Leasehold LLC v KOS USA 1 LLC

2025 NY Slip Op 33519(U)

September 19, 2025

Supreme Court, New York County

Docket Number: Index No. 651397/2025

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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3 TIMES SQUARE LEASEHOLD LLC

Plaintiff,

- v -

KOS USA 1 LLC,

Defendant.

-----X

INDEX NO. 651397/2025

MOTION DATE 07/28/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11 were read on this motion to/for JUDGMENT - DEFAULT

APPEARANCES:

Nesenoff & Miltenberg LLP, New York, NY (Kara Lynn Gorycki, Esq., of counsel), for plaintiff.

EMILY MORALES-MINERVA, J.S.C.

In this action, plaintiff 3 TIMES SQUARE LEASEHOLD LLC moves, by notice of motion (sequence number 001), pursuant to CPLR § 3215, for an order granting it a default judgment against defendant KOS USA 1 LLC. Defendant does not appear or submit opposition to the motion.

For the reasons explained below, the motion (seq. no. 001) is dismissed, without prejudice.

BACKGROUND

Plaintiff 3 TIMES SQUARE LEASEHOLD LLC (licensor) is the ground lessee of 3 Times Square, New York, New York 10036 (premises) (see New York State Courts Electronic Filing Service [NYSCEF] Doc. No. 001, Verified Complaint). Defendant KOS USA 1 LLC, a limited liability company (licensee), entered into a license agreement (Agreement) with licensor, wherein licensor granted licensee a license to use a portion of the ground floor and mezzanine level of the premises for licensee's business (licensed area) (see id.; see also NYSCEF Doc. No. 002, License Agreement, dated March 15, 2024). The Agreement provides that licensee shall pay licensor a license fee "in equal monthly installments of \$91,666.67" (NYSCEF Doc. No. 002, License Agreement). The Agreement commenced on April 01, 2024, and was set to expire on May 31, 2025 (see id.).

According to licensor, licensee defaulted on the Agreement by failing to pay its monthly installments, and on June 27, 2024, licensor terminated the Agreement (see NYSCEF Doc. No. 001, Verified Complaint). However, the parties agreed to reinstate licensee's occupancy of the licensed area, and, pursuant to a letter agreement (Letter Agreement) dated July 08, 2024, the parties modified the Agreement (see id.; see also

NYSCEF Doc. No. 004, Letter Agreement, dated July 08, 2024

[signed by both parties]). The Letter Agreement provides:

"If, at any time during the Deferral Period or the remainder of the License Term, Licensee shall be in default of the observance and performance of any of the terms, covenants and conditions of the Agreement on Licensee's part to be observed and performed, including, without limitation, the terms of this Letter Agreement, then (i) it shall be deemed an Event of Default under the Agreement and (ii) the total sum of the Deferred Amount shall become automatically and immediately due and payable by Licensee to Licensor"

(NYSCEF Doc. No. 004, Letter Agreement).

Pursuant to the Letter Agreement, the parties agreed to defer the license fee from June 01, 2024, through August 31, 2024 (see id.). Instead, licensee agreed to make eight "deferral period payments" of \$10,000 per week, with the first payment due on July 08, 2024, and the last payment due on August 26, 2024 (id.). Licensee also agreed to make eight weekly installment payments of \$2,500.00 toward the security required under the Agreement, commencing on July 08, 2024, and terminating on August 26, 2024 (id.). Licensee made the "deferral period payments", as well as the payments toward security in accordance with the Letter Agreement (see NYSCEF Doc. No. 001, Verified Complaint).

Thereafter, commencing on September 01, 2024, licensee agreed to make nine monthly "deferral payments" of \$21,666.67, with the last payment due on May 01, 2025 (see NYSCEF Doc. No.

004, Letter Agreement). Additionally, the monthly license fee payment of \$91,666.67 -- deferred from June 01, 2024, through August 31, 2024 -- was to re-commence on September 01, 2024 (see id.).

Licensors alleges that licensee failed to make any of the deferral payments, and failed to pay the license fees (see NYSCEF Doc. No. 001, Verified Complaint). As a result, licensee "agreed to vacate the licensed area" (id.). To date, licensee has not made the required payments (id.).

Plaintiff then commenced this action against licensee, asserting one cause of action sounding in breach of contract, and seeking \$653,333.36 in damages, plus pre-judgment interest (see id.). No answer has been filed.

Now, plaintiff moves, by notice of motion (seq. no. 001), pursuant to CPLR § 3215, for an order granting it a default judgment against licensee.

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]" (CPLR § 3215 [a]). Generally, the proponent of a default

judgment 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]; see also Woodson v Mendon Leasing Corp., 100 NY2d 62, 70 [2003]).

Here, licensor appropriately served the summons and verified complaint upon licensee, a limited liability company, by personally delivering two copies of the summons and verified complaint to the Secretary of State (see NYSCEF Doc. No. 009, Affidavit of Service; see also Limited Liability Company Law § 303 [a]).

However, where, as here, a non-appearing defendant is a limited liability corporation served through the Secretary of State, the plaintiff 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])). Though licensor

contends that "no additional notice is required", First Department precedent holds that compliance with CPLR § 3215 (g) (4) is required in actions involving limited liability companies (see Wonder Works Const. Corp. v RCDolner, 44 AD3d 526 [1st Dept 2007]; see also Crespo, 292 AD2d at 10; Turner v WFHA Home Street, LLC, 235 NYS3d 921, 924 [Sup Ct BX Cnty 2025] [applying Wonder Works Const. Corp. and Crespo]). As no such additional service of the summons and verified complaint, and a notice of default, was provided in this action, the motion is denied.

Additionally, while licensor submits the verified complaint (NYSCEF Doc. No. 001), the Agreement (NYSCEF Doc. No. 002), and the Letter Agreement (NYSCEF Doc. No. 004) in support of its breach of contract claim, it fails to submit the ledger detailing the licensee's arrears (see NYSCEF Doc. No. 001, Verified Complaint, providing that the ledger is attached as Exhibit 4 to the Verified Complaint, but there being no Exhibit 4 in the record).

Accordingly, it is hereby

ORDERED that plaintiff's motion (seq. no. 001), pursuant to CPLR § 3215, for a default judgment, is denied without prejudice; it is further

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

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

9/19/2025
DATE


EMILY MORALES-MINERVA, J.S.C.

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