

**First K Realty, LLC v Three Kings Distrib., LLC**

2025 NY Slip Op 33727(U)

October 2, 2025

Supreme Court, New York County

Docket Number: Index No. 150759/2025

Judge: James G. Clynnes

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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. JAMES G. CLYNES PART 39M

Justice

-----X

FIRST K REALTY, LLC,

Plaintiff,

- v -

THREE KINGS DISTRIBUTION, LLC, OMAR ALGHAZALI

Defendant.

-----X

INDEX NO. 150759/2025

MOTION DATE 02/23/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, it is ordered that plaintiff's motion is granted. In 2023, plaintiff First K Realty, LLC, as landlord, entered into a ten-year commercial lease agreement with Three Kings Distribution, LLC, as tenant, and Omar Alghazli, as guarantor. Plaintiff alleges numerous lease violations, including failure to pay late charges accruing between May 2023 and June 2024, failure to pay rent since June 2024, failure to pay the requisite security deposit and real estate taxes, as well as failure to cure regulatory violations issued by the Department of Sanitation and Fire Department. In accordance with the lease, tenant was notified of the outstanding sums due by mail on July 23, 2024, and August 5, 2024. On August 15, 2024, tenant was mailed notice warning that defaults not cured by August 21, 2024, would result in the termination of the lease, requiring tenant to vacate. Tenant has since failed to remit payment, cure the defaults, or surrender the premises, so plaintiff filed the instant suit. Plaintiff's first cause of action seeks a judgment and writ of assistance directing the Sheriff of the City of New York to eject tenant. Plaintiff's second, fourth, and fifth causes of action seek money judgments for, respectively, the arrears owed plus statutory interest (or an inquest to determine the amount owed), use and occupancy plus statutory interest, and attorneys' fees, costs and expenses, as of the date the motion is granted (NYSCEF 1). Plaintiff now moves for default judgment against tenant on the first, second, fourth, and fifth causes of action based on tenant's failure to timely answer or appear (NYSCEF 7).

“A party seeking a default judgment must submit proof of service of the summons and complaint and ‘proof of the facts constituting the claim, the default and the amount due.’ To demonstrate ‘facts constituting the claim,’ the movant need only proffer proof sufficient ‘to enable a court to determine that a viable cause of action exists.’ The movant may do so either by submission of an affidavit of merit or by verified complaint, if one has been properly served.” Bigio v. Gooding, 213 A.D.3d 480, 481 (1st Dept 2023) (citations omitted).

On January 23, 2025, tenant was served with the summons and complaint (although the individual recipient refused their full name, they were authorized to accept service) (NYSCEF 5). On February 5, 2025, tenant was mailed a copy of the summons and complaint (NYSCEF 12). Additionally, on February 27, 2025, tenant was mailed the notice of motion for default judgment and accompanying papers (NYSCEF 24). Accordingly, plaintiff has demonstrated service was proper, that tenant failed to timely answer or appear, and that defendant Three Kings Distribution, LLC, has thereby defaulted. See Gershman v. Ahmad, 131 A.D.3d 1104, 1105 (2d Dept 2015).

“In order to maintain [the first] cause of action to recover possession of real property, [a] plaintiff must (1) be the owner of an estate in fee, for life, or for a term of years, in tangible real property, (2) with a present or immediate right to possession thereof, (3) from which, or of which, he has been unlawfully ousted or dispossessed by the defendant . . . and of which the defendant is in present possession.” Merkos L'Inyonei Chinuch, Inc. v. Sharf, 59 A.D.3d 408, 410 (2d Dept 2009) (citation omitted). Here, plaintiff adduced evidence demonstrating ownership of the subject premises (NYSCEF 2) and that tenant defaulted under the lease (NYSCEF 17-22), meaning tenant does not have any right to occupy the premises. Thus, tenant’s continued occupancy of the premises unlawfully excludes plaintiff of the same (NYSCEF 8). See New York City Hous. Auth. v. Torres, 61 A.D.2d 681, 683 (1st Dept 1978) (affirming default judgment granting eviction where tenant failed to remit rent four months after the initial demand of the landlord); City of New York v. 130/40 Essex St. Dev. Corp., 302 A.D.2d 292, 292–95 (1st Dept 2003) (holding the landlord was entitled to evict commercial tenant due to the unexcused three-month delay in making payments or cure its rent arrears).

On its second cause of action, plaintiff has established entitlement to default judgment on its claims for unpaid rent by showing the existence of a lease (NYSCEF 3) that has since terminated (NYSCEF 22) and alleging tenant failed to remit payment (NYSCEF 13). See Bremen House, Inc. v. LoBosco, 214 A.D.3d 557, 557–58 (1st Dept 2023); Thor Gallery At S. Dekalb, LLC v. Reliance

Mediaworks (USA) Inc., 143 A.D.3d 498, 498(1st Dept 2016). “Indeed, defaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them.” Woodson v. Mendon Leasing Corp., 100 N.Y.2d 62, 71 (2003) (citations omitted).

On its fourth cause of action, since plaintiff has established entitlement to ejectment, plaintiff has also established entitlement to default judgment on the issue of liability with respect to use and occupancy. See Noamex, Inc. v. Domsey Worldwide, Ltd., 192 A.D.3d 817, 819 (2d Dept 2021). Plaintiff is properly awarded use and occupancy in accordance with the rate set under the lease, 300% of the arrears, as such an award on default is not final. See Synod of Bishops of Russian Orthodox Church Outside of Russia v. Preschool of Am. (USA) Inc., 214 A.D.3d 466, 466–67 (1st Dept 2023). But See Mushlam, Inc. v. Nazor, 80 A.D.3d 471, 472, 916 N.Y.S.2d 25, 26 (1st Dept 2011) (“In determining the reasonable value of use and occupancy, the rent reserved under the lease, while not necessarily conclusive, is probative.”).

Plaintiff’s fifth cause of action is properly granted. See generally Hooper Associates, Ltd. v. AGS Computers, Inc., 74 N.Y.2d 487, 491 (1989). “An award of attorneys’ fees [here is] proper since the parties expressly provided in their contract that, in the event of a default, the defaulting party would be responsible for costs and expenses, including attorneys’ fees, incurred by the performing party as a result of the default.” Sempra Energy Trading Corp. v. PG & E Texas VGM, L.P., 284 A.D.2d 253, 254 (1st Dept 2001). Here, the lease provides that in the event tenant defaults, tenant shall be liable to landlord for reasonable legal fees, costs, and expenses landlord incurs in connection with litigation to enforce its rights under the lease.

Accordingly, it is hereby

ADJUDGED that plaintiff is entitled to possession of the premises located at 231 First Avenue, New York, New York 10003 as against defendant Three Kings Distribution, LLC, and the Sheriff of the City of New York, County of New York, upon receipt of a certified copy of this Order and Judgment and payment of proper fees, is directed to place plaintiff in possession accordingly; and it is further

ADJUDGED that immediately upon entry of this Order and Judgment, plaintiff may exercise all acts of ownership and possession of the Premises including entry thereto, as against defendant Three Kings Distribution, LLC; and it is further

ORDERED that within 30 days of entry of this order, plaintiff shall submit via NYSCEF (with copy to all parties) an affirmation with supporting exhibits in support of its request for attorneys' fees; and it is further

ORDERED that an Inquest is scheduled for 9:30am on November 13, 2025 to determine the amount owed for use and occupancy.

This constitutes the decision and order of the court.

10/21/2025

DATE

*James G. Clynes*  
JAMES G. CLYNES, 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