

City of New York v Nurse

2025 NY Slip Op 33872(U)

October 7, 2025

Supreme Court, New York County

Docket Number: Index No. 453816/2024

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. 453816/2024

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

MOTION DATE 05/12/2025

Plaintiff,

MOTION SEQ. NO. 002

- v -

PATRICK NURSE,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for JUDGMENT - DEFAULT

APPEARANCES:

Wilson Elser Moskowitz Edelman & Dicker LLP, White Plains, New York (Marc J. Gross, Esq., of counsel) for plaintiffs.

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

In this action, plaintiffs THE CITY OF NEW YORK and THE NEW YORK CITY WATER BOARD, move, by notice of motion (seq. no. 02),¹ pursuant to CPLR § 3215, for an order granting them a default judgment against defendant PATRICK NURSE in the amount of \$41,026.39. Defendant does not appear or submit opposition to the motion.

As explained below, the Court dismisses the motion.

¹ Plaintiffs withdrew their initial motion for a default judgment on May 02, 2025 (see NYSCEF Doc. No. 17, Decision and Order, dated May 05, 2025 [marking motion withdrawn]).

BACKGROUND

Plaintiffs THE CITY OF NEW YORK and THE NEW YORK CITY WATER BOARD (plaintiffs) provide water and wastewater services to defendant PATRICK NURSE (defendant) for the property located at 502 Marion Street, Brooklyn, NY 11233 (premises) (see New York State Courts Electronic Filing System [NYSCEF] Doc. No. 01, Complaint).

On December 26, 2024, plaintiffs commenced this action pursuant to Public Authorities Law § 1045-j (5)² seeking to recover \$41,026.39 in unpaid water and wastewater charges allegedly incurred by defendant at the premises (see NYSCEF Doc. No. 01, Complaint). Specifically, plaintiffs allege that "commencing from an invoice from on or about May 16, 1995, and continuing through an invoice dated December 04, 2024 [] defendant incurred water, wastewater, and statutory late payment charges for [] water and wastewater services performed by plaintiff" (id. [emphasis added]). Further, plaintiffs allege

²Public Authorities Law § 1045-j, entitled "Imposition and disposition of sewer and water fees, rates, or charges" provides, as relevant here: "(5) 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."

that "the past due amount of \$41,026.39 is currently due and owing, although duly demanded" (id.). Defendant failed to answer or otherwise respond to the complaint.

Thereafter, plaintiffs filed the instant motion (seq. no. 001) seeking an order, granting it leave to enter a default judgment against defendant (see CPLR § 3215 [governing default judgments]). Defendant neither appeared nor filed a response.

In support of the motion, plaintiffs submit an affidavit of service of the summons and complaint, dated January 27, 2025 (NYSCEF Doc. No. 08); an affirmation of additional mailing pursuant to CPLR § 3215 (g)(3), dated February 18, 2025 (NYSCEF Doc. No. 09); 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 water and wastewater bill, with an outstanding balance of \$41,026.39 (NYSCEF Doc. No. 02); a quitclaim deed for the premises, dated June 21, 2019, demonstrating a transfer of ownership to defendant from non-party Edna Rios⁴ (NYSCEF Doc. No. 10, Deed, dated June 12, 2019);

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).

⁴ The deed states, "QUITCLAIM DEED, Edna Rios [GRANTOR/SELLER] TO Patrick Nurse [GRANTEE/BUYER]" for "Borough: Brooklyn; Block: 1522; Lot: 34, Entire Lot; Address: 502 Marion Street; Property Type: Dwelling Only - 3 Family" (NYSCEF Doc. No. 10, Deed, dated June 12, 2019). The deed further provides that "Edna Rios [] party to the first part and Patrick Nurse [] party to the second part . . . and [Edna Rios], in consideration of [\$10.00] paid by

and a customer registration form for water and sewer billing, signed by defendant, and dated June 12, 2019 (NYSCEF Doc. No. 10).

ANALYSIS

Pursuant to CPLR § 3215 (a), a plaintiff may seek a default judgment where a defendant fails to appear, plead, or proceed to trial. On a motion for leave to enter a default judgment pursuant to CPLR § 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party's default in answering or appearing (see generally CPLR § 3215; see also Allstate Ins. Co. v Austin, 48 AD3d 720, 720 [2d Dept 2008]).

"CPLR § 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action" (Welz v Brown, 228 AD3d 416, 418 [1st Dept 2024]; Joosten v Gale, 129 AD2d 531, 535 [1st Dept

[Patrick Nurse], does hereby remise, release and quitclaim unto [Patrick Nurse] . . . ALL that certain plot . . . being in Schedule A annexed hereto and incorporated herein" (NYSCEF Doc. No. 10, Deed [emphasis in original]). Schedule A describes the "plot" as the premises at issue, "502 Marion Street, Brooklyn, New York, and designated as Block 1522, Lot 34" (id.).

1987])). Though a defaulting defendant is "deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them . . . if those factual allegations do not state a valid cause of action, the party moving for judgment is not entitled to the requested relief, even on default" (Nationstar Mortgage, LLC v Hilpertshauser, 156 AD3d 1052, 1053 [3d Dept 2017] [internal citations and quotation marks omitted]).

Though untitled, the complaint appears to allege a cause of action sounding in account stated. "An account stated claim is an account balanced and rendered, with an assent to the balance express or implied; so that the demand is essentially the same as if a promissory note had been given for the balance" (TH Fashion Ltd. v Vince Holding Corp., 230 AD3d 1079, 1079-1080 [1st Dept 2024], quoting Aronson Mayefsky & Sloan, LLP v Praeger, 228 AD3d 182, 185 [1st Dept 2024] [internal quotation marks omitted]). Such assent may be "implied where a defendant retains bills without objecting to them within a reasonable period of time, or makes partial payment on the account" (Stardom Brands, LLC v S.K.I. Wholesale Beer Corp., 172 AD3d 1266, 1268 [2d Dept 2019]; Aronson Mayefsky & Sloan, LLP, 228 AD3d at 185).

However, this cause of action assumes the existence of some indebtedness between the parties, or an express agreement to

treat a statement of debt as an account stated (see Dragonetti Bros. Landscaping Nursery & Florist, Inc. v Verizon N.Y., Inc., 208 AD3d 1125, 1126 [1st Dept 2022] [emphasis added]).

Further, Public Authorities Law § 1045-j (5) provides that unpaid water charges "shall constitute a lien upon the premises served and a charge against the owners thereof" (Public Authorities Law § 1045-j [5] [emphasis added]), which "in turn may form the basis for a civil action to recover the unpaid amounts" (Dept. of Env'tl. Protection of City of New York v Bd. of Managers of Cassa NY Condominium, 82 Misc3d 1238[A], *2 [Sup Ct NY Cnty] [G. Lebovits, J.S.C.]).

Here, plaintiffs allege that defendant, "commencing from an invoice from on or about May 16, 1995, and continuing through an invoice dated December 04, 2024", incurred water and wastewater charges for services performed by plaintiffs in the amount of \$41,026.39 (NYSCEF Doc. No. 01, Complaint [emphasis added]). However, as evidenced by the quitclaim deed, ownership of the premises was not transferred from non-party Edna Rios to defendant until June 12, 2019 (see NYSCEF Doc. No. 10, Quitclaim Deed, dated June 12, 2019). While "a quitclaim deed does not represent that the grantor had good title" (HSBC Bank USA v Simms, 2011 WL 13137265 [Sup Ct NY Cnty 2011], citing Ebenstein v Pritch, 275 AD 256, 259 [1st Dept 1949]), plaintiffs present no argument or case law to support its request for a default

judgment against defendant for the full past due amount of \$41,026.39 (see NYSCEF Doc. No. 18, Affirmation of Marc J. Gross in Support of Plaintiffs' Motion).⁵

Therefore, in consideration of the evidence proffered and the allegations in plaintiffs' complaint, plaintiffs have not satisfactorily established the prima facie validity of its account stated cause of action. Without sufficient proof that defendant is indebted to plaintiffs for water and wastewater charges that accrued prior to defendant's ownership, the motion (seq. no. 02) must be denied (see Dragonetti Bros. Landscaping Nursery & Florist, Inc., 208 AD3d at 1126).

Accordingly, it is hereby

ORDERED that plaintiffs' motion (seq. no. 02), pursuant to CPLR § 3215, for a default judgment, against defendant PATRICK NURSE is dismissed without prejudice; it is further

ORDERED that plaintiff shall serve a copy of this order, with notice of entry, upon defendant, within 30 days of this order; it is further


⁵ Plaintiffs do not submit a memorandum of law in support of the instant motion (seq. no. 02). Instead, plaintiffs rely upon the affirmation of Marc J. Gross, Esq., wherein counsel argues that, "New York Real Property Law § 339-e, otherwise known as the Condominium Act, provides that 'common elements' in condominiums are hot and cold water, and such Common elements cannot be divided, therefore, all owners of the condominium are jointly and severally liable to plaintiff" (NYSCEF Doc. No. 18, Affirmation of Marc J. Gross, Esq.). However, the premises at issue is not a condominium, and it appears that this section of the Real Property Law is relied upon in error.

ORDERED that plaintiff shall bring a renewed default judgment motion, supported by appropriate documentation, within 90 days of this order; and it is further

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

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

10/07/2025
DATE


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"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE