

CG W. 181st St. LLC v Natal

2025 NY Slip Op 34048(U)

October 16, 2025

Supreme Court, New York County

Docket Number: Index No. 650662/2025

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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CG WEST 181ST STREET LLC

Plaintiff,

- v -

SAED MOHAMMED YASSIN NATAL,

Defendant.

-----X

INDEX NO. 650662/2025

MOTION DATE 05/08/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11

were read on this motion to/for JUDGMENT - DEFAULT.

APPEARANCES:

Kucker, Marino, Winiarsky & Bittens LLP (Jonathan W. Rich, Esq.) for plaintiff.

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

In this action, plaintiff CG WEST 181st STREET LLC, moves, by notice of motion (seq. no. 01), pursuant to CPLR § 3215, for an order granting it a default judgment against defendant SAED MOHAMMED YASSIN NATAL in the amount of \$144,536.00, plus statutory interest from December 01, 2024. Defendant SAED MOHAMMED YASSIN NATAL does not appear or submit opposition to the motion.

For the reasons explained below, the Court dismisses the motion (seq. no. 01), without prejudice.

BACKGROUND

Plaintiff CG WEST 181st STREET LLC (owner/landlord) is the owner of the building located at 556 West 181st Street, New York, New York 10033, and the landlord of the retail premises located therein (see New York State Courts Electronic Filing System [NYSCEF] Doc. No. 01, complaint). On November 14, 2023, plaintiff's predecessor-in-interest, non-party 554-558 W 181st Street LLC, and non-party Gee4Bee Wireless Corporation (tenant), entered into a five-year commercial lease for the retail premises (see NYSCEF Doc. No. 01, complaint; see also NYSCEF Doc. No. 06, lease, dated November 16, 2023). Simultaneous with execution of the commercial lease, defendant SAED MOHAMMED YASSIN NATAL (guarantor) executed an unconditional guarantee of tenant's obligations under the lease (see NYSEF Doc. No. 01, complaint; see also NYSCEF Doc. No. 07, personal guaranty of the lease, also dated November 16, 2023).

Thereafter, tenant stopped paying rent, and owner/landlord commenced a nonpayment proceeding against tenant in the New York City Civil Court, Housing Part, pursuant to Index No. LT-300778-25/NY (see NYSCEF Doc. No. 01, complaint [providing that tenant commenced an action in the New York City Civil Court, Housing Part, seeking a judgment of possession and a money judgment]). On February 21, 2025, the housing court (J. Zellan, J.) granted

owner/landlord's petition, on default, and issued a judgment of possession in favor of owner/landlord (see CG West 181st Street LLC v Gee4Bee Wireless Corp. A/K/A Gee4Bee Wireless, Inc. DBA Black Friday Everyday, LT-300778-25/NY, Decision and Order, dated February 21, 2025).

While the nonpayment proceeding was pending in the housing court, owner/landlord commenced the instant action against guarantor, alleging breach of the guaranty. Therein, owner/landlord alleges that tenant ceased paying rent on December 01, 2024, with the arrears totaling \$68,830.00, and that, pursuant to the terms of the guaranty, guarantor is liable for said amount (see NYSCEF Doc. No. 01, complaint at ¶ 15).

Guarantor has not appeared, answered, or otherwise moved against the complaint. Now, owner/landlord moves, by notice of motion (seq. no. 01), pursuant to CPLR § 3215, for an order granting it a default judgment against guarantor in the amount of \$144,536.00, plus statutory interest from December 01, 2024.¹

For the reasons explained below, the Court dismisses the motion without prejudice.

¹ Owner/landlord avers that this amount represents the arrears due as of May 08, 2025, the filing date of the instant motion, as well as \$9,476.00 in attorneys' fees (see NYSCEF Doc. No. 09, affirmation in support of motion).

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]). To establish entitlement to a default judgment, plaintiff must file (1) proof it served defendant with the summons and complaint, and (2) "proof of the facts constituting the claim, the default, and the amount due . . . by affidavit made by the party" (CPLR § 3215 [f]; see also Woodson v Mendon Leasing Corp., 100 NY2d 62, 70 [2003] [providing that "an applicant for a default judgment [must] file 'proof by affidavit made by the party of the facts constituting the claim'"]; 231st Riverdale LLC v 7 Star Home Furniture Inc., 198 AD3d 524, 525 [1st Dept 2021]).

In matters of default, where "the defendant fail[s] to appear, and the plaintiff does not have the benefit of discovery, the [supporting affidavit] need only allege enough facts to enable a court to determine that a viable cause of action exists" (Woodson, 100 NY2d at 70-71, citing 7 Weinstein-Korn Miller, NY Civ Prac ¶ 3215.24; see also B&H Flooring, LLC v Folger, 228 AD3d 809 [2d Dept 2024]). "Indeed, defaulters are deemed to have admitted all factual allegations contained in the

complaint and all reasonable inferences that flow from them” (Woodson, 100 NY2d at 71, citing Rokina Opt. Co. v Camera King, 63 NY2d 728, 730 [1984]; see also Petty v Law Off. of Robert P. Santoriella, P.C., 200 AD3d 621, 621 [1st Dept 2021] [holding: “[B]y defaulting, a defendant admits all traversable allegations contained in the complaint, and thus concedes liability, although not damages”]).

However, “[s]ome proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action,” but the standard of proof is ‘minimal,’ and ‘not stringent’” (Petty, 200 AD3d at 621, quoting Joosten v Gale, 129 AD2d 531, 535 [1st Dept 1987]).

In support of its motion, owner/landlord submits the lease (NYSCEF Doc. No. 06), guaranty (NYSCEF Doc. No. 07), tenant’s ledger (NYSCEF Doc. No. 08), and the affidavit of Christina Waters, the Comptroller of non-party Waterford Real Estate Management LLC (Waterford) (NYSCEF Doc. No. 05, affidavit of Christina Winters). Therein, Winters explains that non-party Waterford is the managing agent for owner/landlord, and in her position, she personally manages Waterford’s finances and accounts receivable, including the ledgers of owner/landlord (see id.). These submissions establish the “proof of the facts constituting the claim” as required by CPLR § 3215 (f).

However, service of process upon guarantor is defective. CPLR § 308 (2) contemplates that personal service can be effectuated upon someone other than the named party, by delivering the summons and complaint to a person of suitable age and discretion at the actual place of business, dwelling place, or usual place of abode of the person to be served, and by mailing the same to the person to be served at his or her last known residence, or actual place of business (see generally CPLR § 308). A person is considered of suitable age and discretion when said person showcases objectively sufficient maturity, understanding and responsibility under the circumstances to be reasonably likely to convey the summons to the defendant (see Citimortgage, Inc v Leitman, 232 AD3d 847, 848 [2d Dept 2024]).

The burden is on plaintiff to prove it properly served defendant with the summons and complaint, and that it adhered to the strict procedural guidelines for service of process (see Rosenbaum v Rosenbaum, 145 AD3d 460, 461 [1st Dept 2016] [holding that "plaintiff has the burden of demonstrating by a preponderance of the credible evidence that service was properly made on defendant pursuant to CPLR § 308 (2)"]; see also Dorfman v Leidner, 76 NY2d 956, 958 [1990] [holding that "service of process is carefully prescribed by the Legislature, which affords litigants ample methods for serving natural persons"]).

Here, plaintiff submits an affidavit of service providing

that on February 22, 2025 -- one day after the housing court issued a judgment of possession in favor of owner/landlord and against tenant -- owner/landlord served guarantor by delivering a copy of the summons and complaint to "Junda Alvarado, Co-worker" at tenant's address, that being 556 West 181st Street, New York, New York 10033 (NYSCEF Doc. No. 02, affidavit of service, dated February 22, 2025). The affidavit of service does not, among other things, provide any factual or evidentiary support demonstrating that tenant's address is guarantor's actual place of business, or the basis of knowledge to support the conclusion that "Junda Alvarado" is guarantor's co-worker. Absent proper service of process, the court lacks jurisdiction over guarantor.

Notwithstanding, owner/landlord does not submit a proper affidavit of nonmilitary service. The Federal Servicemembers Civil Relief Act and New York State Soldiers' and Sailor's Civil Relief Act requires a party seeking a default judgment against an individual defendant to submit proof that the defendant was not in military service at the time of the default (see 50 USC § 3931 [b] [1] [emphasis added]; see also Military Law § 309 [1]). The process server's conclusory inquiry of "Junda Alvarado" at the time of service of process does not constitute an investigation into guarantor's military status at the time of default (see MB v Precise Mgt., Inc., 2018 WL 2415953, *1 [Sup

Ct NY Cnty 2018] [holding that "a default judgment motion must be accompanied by an investigation into the military status of the defendant and an affidavit detailing the investigation, which cannot be cursory"], citing Unitrin Advantage Ins. Co. v 21st Century Pharm., 158 AD3d 450, 451 [1st Dept 2018]).

Accordingly, it is hereby

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

ORDERED that plaintiff shall re-make the motion upon proper papers within ninety (90) days of the date of this order; and it is further

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

10/16/2025

DATE


EMILY MORALES-MINERVA, J.S.C.

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