

Drake One Co., LLC v Tejada
2025 NY Slip Op 35399(U)
March 11, 2025
Supreme Court, Westchester County
Docket Number: Index No. 62767/2023
Judge: Elena Goldberg-Velazquez
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**To commence the statutory time period
For appeals as of right (CPLR § 5513[a]),
you are advised to serve a copy of this
order, with notice of entry,
upon all parties.**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
DRAKE ONE COMPANY, LLC,

Plaintiff

**AMENDED
DECISION & ORDER**
Index No.: 62767/2023
Motion Seq. No. 3

-against-

JOEL TEJADA

Defendant(s)

-----X
Hon. Elena Goldberg-Velazquez, J.S.C.

The Decision and Order issued on January 22, 2025, is amended due to a typographical error in the amount of the default judgment in the first decretal paragraph and an error in the second paragraph on page four (4). The balance of the January 22, 2025, Decision and Order remains in full force and effect.

The following papers, numbered 1, were read, and considered in connection with Plaintiff's Notice of Motion (Motion Seq. No. 3) for an order pursuant to *Civil Practice Law and Rules* § 3215 granting Plaintiff default judgment for \$47,690.15 plus counsel fees in an amount to be determined on the basis that the Defendant has failed to timely answer or appear and Plaintiff is entitled to judgment for breach of the Lease as prayed for in the complaint together with such other and further relief as this Court deems just and proper:

PAPERS**NUMBERED**

Notice of Motion (Motion Seq. No. 1)/Affirmation of Robert Dashow, Esq./
Affidavit of Francesca Furcayg/Exhibits A-J/Affidavit of Service

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Upon the foregoing papers, the Court now rules as follows:

The instant action arises from the alleged breach of a residential lease agreement between Plaintiff and Defendant and recovery of monies owed. Plaintiff commenced the instant breach of contract action against Defendant by filing the Summons and Complaint on June 21, 2023. Plaintiff states that the Defendant owes the sum of \$47,690.15 in rent and other lease charges plus interest costs and fees.

On July 8, 2023, Plaintiff served Defendant with Summons and Complaint pursuant to *Civil Practice Law and Rules* § 308(2) by service on Eli Lorenzo, a co-tenant at 40 Memorial Highway, Apt. 17K, New Rochelle, New York. *See* NYSCEF Doc. No. 18. Despite the aforementioned service Defendant has failed to appear or answer.

On February 14, 2024, the Plaintiff filed a motion seeking default judgment (Motion Seq. No. 1) which was denied by the Honorable Paul I. Marx, J.S.C. in a Decision and Order dated June 20, 2024. Plaintiff's first motion for default judgment was denied due to their failure to demonstrate (1) the facts constituting their claim and (2) its compliance with the additional notice required pursuant to *Civil Practice Law and Rules* § 3215(g).

On July 8, 2024, the Plaintiff a second motion seeking default judgment (Motion Seq. No. 2) which was denied by the Honorable Paul I. Marx, J.S.C. in a Decision and Order dated June 20, 2024, due to Plaintiff's submission of the "same insufficient evidence it submitted on its previous

motion for default judgment” to demonstrate compliance with *Civil Practice Law and Rules* § 3215(g). Plaintiff was given leave to renew their motion default judgment upon proper papers. On November 21, 2024, the Plaintiff filed the instant motion seeking default judgment (Motion Seq. No. 3).

Default Judgment pursuant to Civil Practice Law and Rules § 3215

A Plaintiff may seek a default judgment against a Defendant, who fails to appear, plead, or proceed to trial or when the court orders a dismissal for any other neglect to proceed. *See Civil Practice Law and Rules* § 3215(a). On a motion for leave to enter judgment against a defendant for the failure to answer or appear, “a plaintiff must submit proof of service of the summons and complaint, proof of the facts constituting its claim, and proof of the defendant's default.” *Triangle Props. # 2, LLC v. Narang*, 73 AD3d 1030, 1032 (2d Dept 2010); *See also Mercury Cas. Co. v Surgical Ctr. at Milburn, LLC*, 65 AD3d 1102 (2d Dept 2009); *Matone v Sycamore Realty Corp.*, 50 AD3d 978 (2d Dept 2008).

Here, the instant application is supported by an Affidavit of Francesca Furcayg, who indicates that she is the “Litigation Manager” for Plaintiff. According to Furcayg, Defendant was a tenant at 207 Drake Avenue, Apt. #04A, New Rochelle, New York based upon an initial lease term from November 10, 2018, to May 31, 2020. Furcayg states that the rent during the initial term was \$2,499.00 and increased to \$2,699.00 during the third renewal lease. Annexed to the Furcayg Affidavit the Plaintiff has included the initial lease, the Second Renewal Lease from June 1, 2021, to May 31, 2022, and the Third Renewal Lease term from June 1, 2022, to May 31, 2023.

Plaintiff also contends that Defendant has a separate written Parking Agreement which provided him a parking space for \$150.00 per month plus applicable taxes. According to the Furcayg Affidavit, Defendant failed to pay rent as per the Third Renewed Lease and the Parking Agreement and vacated the apartment on October 26, 2022, early, as the lease did not expire until May 31, 2023. Plaintiff asserts that the subject apartment was re-rented on January 19, 2023, and therefore Defendant owes unpaid rent solely until the apartment as re-rented in the amount of \$42,387.67. Additionally, Furcayg asserts that Defendant owes \$5,360.80 as to unpaid parking fees and \$2,750.00 for damages to the subject apartment beyond ordinary wear and tear. Plaintiff does not seek any of the fees and charges included in the Rent Ledger as to late fees for the apartment rent and an unpaid security increase.

In regard to the required notice pursuant to *Civil Practice Law and Rules* § 3215(g), Plaintiff has annexed a properly captioned Notice dated October 11, 2024, which is more than twenty (20) days than the date hereof. The Notice was sent to Defendant at the same address where he was served in New Rochelle and includes a copy of the Summons and Complaint from this action bearing the Court index number and court. Therefore, Plaintiff has submitted sufficient proof of mailing Defendant additional notice of the instant action before this Court.

Plaintiff also seeks attorney's fees "in an amount to be determined on the basis that the Defendant has failed to timely answer or appear and Plaintiff is entitled to judgment for breach of the Lease..." "An award of reasonable attorney's fees is within the sound discretion of the court, based upon such factors as the time and labor required, the difficulty of the issues involved, and the skill and effectiveness of counsel." *SO/Bluestar, LLC v. Canarsie Hotel Corp.*, 33 AD3d 986, 988

(2d Dept 2006). A hearing is not always required but for a court to determine the reasonable value of services rendered they must possess sufficient information upon which the court can make an assessment. *See Id.* Plaintiff has not included an affidavit of services detailing hours spent and the hourly rate charged for the work done and therefore any application for attorney's fees is insufficient. *See Gamache v. Steinhaus*, 7 AD3d 525, 527 (2d Dept 2004) *quoting Gutierrez v. Direct Mktg. Credit Servs.*, 267 AD2 427, 428 (2d Dept 1999). Plaintiff's request for attorney's fees is granted to the extent that Plaintiff has leave to file an application for same with an affidavit of services detailing hours spent and value of the services.

Based upon the foregoing, Plaintiff's unopposed motion is granted.

Accordingly, it is

ORDERED that Plaintiff Notice of Motion for Default Judgment (Motion Seq. No. 3) is granted in the amount of **FOURTY SIX THOUSAND SIX HUNDRED NINETY DOLLARS and FIFTEEN CENTS (\$46,690.15)** plus interest together with the costs and disbursements of this action to be taxed by the Westchester County Clerk; and it is further

ORDERED Plaintiff has leave to file an application seeking attorney's fees with an affidavit of services detailing hours spent and value of the services.

The foregoing constitutes the Amended Order of this Court on Motion Seq. No. 3

Dated: White Plains, New York
March 11, 2025



Hon. Elena Goldberg-Velazquez, Esq.

TO:

ROBERT A. DASHOW, ESQ.
MICHAEL R. KOENIG, ESQ.
Attorney for Plaintiff
(via NYSCEF)

JOEL TEJADA
Defendant
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(via Regular Mail)