

Rockaway One Co., LLC v Nunez
2025 NY Slip Op 35480(U)
February 25, 2025
Supreme Court, Westchester County
Docket Number: Index No. 65816/2024
Judge: David J. Squirrell
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SUPREME COURT-STATE OF NEW YORK
IAS PART-WESTCHESTER COUNTY

Present: HON. DAVID J. SQUIRRELL, J.S.C.

SUPREME COURT: WESTCHESTER COUNTY

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ROCKAWAY ONE COMPANY, LLC

Plaintiff,

- against -

ALBERT NUNEZ and SAPPHIRA LORRAINE
NUNEZ,

Defendants.

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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.

Index No.: 65816/2024

DECISION AND ORDER

Motion Date: December 6, 2024

Motion #1

The following papers were read and considered on a motion by the Plaintiff, pursuant to CPLR § 3215, for leave to enter a default judgment against Defendants Albert Nunez and Sapphira Lorraine Nunez, and to issue a judgment in the amount allegedly owed to Plaintiff.

DOCUMENT

NYSCEF Doc. No.

Notice of Motion – Dashow Affirmation –
Furcayg Affidavit – Exhibits A-F

NYSCEF 3-11

Upon the foregoing papers, it is hereby,

ORDERED, that the motion is granted.

Factual/Procedural Background

The Plaintiff commenced this action to recover damages for money owed due to Defendant's tenancy holdover in an apartment owned by Plaintiff.

The Plaintiff and Defendant Albert Nunez ("AN") entered an employment contract, wherein Defendant AN worked as a porter at 20-44 Seagirt Boulevard, Far Rockaway, Queens. In exchange Defendant AN and his family, including his spouse Defendant Sapphira Lorriane

Nunez ("SLN"), could resided in Apartment AA, within the building rent free. Should the employment contract terminate for any reason, Defendant AN agreed he and his family would vacate the apartment within 10 days of the employment contract termination. If Defendants remained in possession of the apartment, they were required to pay Plaintiff \$3,000 per month for rent.

The employment contract was terminated on April 20, 2019. Defendant AN vacated the apartment that same day, but Defendant SLN remained in the apartment beyond the 10-day period in which she was required to vacate same. Plaintiff commenced a holdover proceeding against Defendant SLN in Housing Court. On September 24, 2019, the parties stipulated that SLN would vacate the apartment on October 31, 2019 and Plaintiff reserved its rights to collect the rent owed.

Defendant SLN did not voluntarily vacate the apartment as was stipulated. Instead, Defendant SLN was evicted on November 11, 2019.

Defendants did not vacate the apartment for a total of 7 months, totaling \$21,000 in unclaimed rent.

Plaintiffs filed the instant Summons and Complaint on July 19, 2024, to collect the sum of rent owed by Defendants.

Service was completed with respect to each Defendant as of August 14, 2024.

Pursuant to CPLR 3215(g)(3)(i), Plaintiff served the Summons and Complaint by mail on September 9, 2024. To date, no Answer has been filed and the Defendants have not appeared and no application to extend their time to appear has been filed with the Court.

Discussion/Legal Analysis

In support of a motion for leave to enter a default judgment pursuant to CPLR 3215, a

plaintiff must file proof of: (1) service of the summons and the complaint, (2) the defendant's default thereon; and (3) the facts constituting the claim. *CPLR 3215[ff]; Todd v. Green*, 122 A.D.3d 831, 997 N.Y.S.2d 155 [2nd Dept. 2014]; *Fried v. Jacob Holding, Inc.*, 110 A.D.3d 56 [2nd Dept 2013].

If, as here, the default judgment is premised upon the non-appearance of Defendants, the plaintiff is required to serve the defendants at least 20 days before the entry of such judgment in accordance with CPLR § 3215(g)(3). *CPLR 3215(g)(3); Fried v. Jacob Holding, Inc.*, 110 A.D.3d 56 [2nd Dept 2013].

Here, Plaintiffs properly served Defendants with the Summons and Complaint in this matter. Defendants have not appeared and are in default.

Furthermore, in support of the motion for default judgment, Plaintiffs submit the Employment Apartment Lease Agreement, which clearly states that the Defendants would pay \$3,000 a month in rent following the termination of the employment agreement. Plaintiff also submitted the Affidavit of Francesca Furcayg, an employee and manager for Plaintiff, who is familiar with the record keeping practices of Plaintiff and indicated that no payments were received from Defendants towards the total amount of rent owed (\$21,000).

Plaintiffs have sufficiently pled the facts constituting the claims against Defendants and based upon the documentary evidence submitted Defendants are in default in the amount of \$21,000.00.

Thus, the motion for a default judgment is granted.

Accordingly, and for the reasons cited herein, it is hereby,

ORDERED, that the motion is for default judgment is granted in the amount of

\$21,000.00; and it is further,

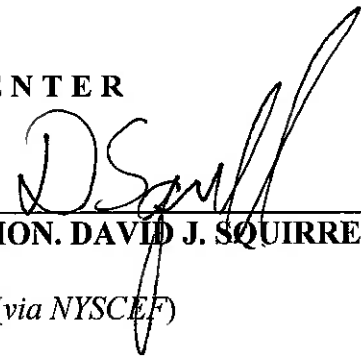
ORDERED, that Plaintiffs' counsel must serve a copy of this Order upon Defendants, by overnight mail within 5 days of receipt; and it is further,

ORDERED, that Plaintiffs' counsel, on notice to all Defendants, is to submit to the court a proposed judgment consistent herewith within 30 days of the date of this order.

The foregoing constitutes the decision and order of the court.

Dated: February 25, 2025
White Plains, New York

ENTER



HON. DAVID J. SQUIRRELL, J.S.C.

TO: ROBERT ANDREW DASHOW, Esq. (*via NYSCEF*)
Attorney for Plaintiffs