

Associated Supermarket Group, LLC v 151 E. Tremont Food Corp.
2025 NY Slip Op 35616(U)
January 7, 2025
Supreme Court, Nassau County
Docket Number: Index No. 609194/2024
Judge: Randy Sue Marber
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAUPresent: **HON. RANDY SUE MARBER****JUSTICE**

TRIAL/IAS PART 2

ASSOCIATED SUPERMARKET GROUP, LLC and
AFS CAPITAL LLC,

Plaintiffs,

-against-

Index No.: 609194/24
Motion Sequence...01
Motion Date...10/4/24
XXX151 E. TREMONT FOOD CORP. and HIKMAT
ABUZAHRIEH,Defendants.

Papers Submitted:

Notice of Motion.....X

Upon the foregoing papers, the unopposed motion by the Plaintiffs, ASSOCIATED SUPERMARKET GROUP, LLC and AFS CAPITAL LLC, seeking an Order pursuant to CPLR § 3215, granting a default judgment in their favor as against the Defendants, 151 E. TREMONT FOOD CORP. ("TREMONT") and HIKMAT ABUZAHRIEH ("ABUZAHRIEH"), and granting a money judgment based on the Defendants' default of a Supply Agreement and a Promissory Note, is determined as hereinafter provided.

In this breach of contract action, the Plaintiffs allege that on or about August 29, 2019, the Plaintiffs and the Defendant, TREMONT, entered into a three (3) year term Supply Agreement ("Supply Agreement") whereby TREMONT agreed to purchase

merchandise through the Plaintiffs, on credit, from August 29, 2019 through August 29, 2022, with automatic one year renewals, unless the Supply Agreement was canceled by either party in writing (*See* Supply Agreement, annexed to Motion as Exhibit “1”; *see also* Plaintiff’s Affidavit, NYSCEF Doc. No. “13” ¶¶ 7-8). Pursuant to the Supply Agreement, the Plaintiffs allege that merchandise was delivered to the Defendant, TREMONT, from August 2019 through October 2023 (*See* Plaintiff’s Affidavit, NYSCEF Doc. No. “13” at ¶ 12). The Plaintiffs further allege that each delivery of merchandise was accompanied by an itemized invoice and, additionally, a statement was emailed weekly to said Defendant indicating the date, invoice number and amount due and owing, and said Defendant never objected to the amount stated on the invoices (*Id.* at ¶¶ 14-16). Thus, the Plaintiffs allege that the Defendant, TREMONT, failed to make payments despite receiving weekly statements (*Id.* at ¶ 16).

The Court notes that a specific date of default that TREMONT allegedly failed to make a payment was not specified in the Plaintiff’s Affidavit (*Id.* at ¶ 16). Upon review of the statements provided, the Court notes that the last ACH payment made by the Defendant, TREMONT, was on November 3, 2023 in the amount of \$2,000.00, and a “PR Contribution” was made on December 2, 2023 in the amount of \$30,047.85. It is alleged that as of the March 23, 2024 statement provided, the Defendant, TREMONT, has a remaining unpaid balance of \$72,313.78 (*See* Weekly Statements, annexed to Motion as Exhibit “2”).

As such, pursuant to TREMONT’s alleged default under the Supply Agreement, the Plaintiffs seek the unpaid sum of \$72,313.68, together with interest from

March 23, 2024. Additionally, pursuant to the Supply Agreement, the Plaintiffs seek damages for future lost profits in the amount of \$16,500.00 (*See* Complaint, annexed to Motion as Exhibit “7” at ¶ 16; *see also* Supply Agreement, annexed to Motion as Exhibit “1” at ¶ 14).

Furthermore, the Plaintiffs allege that the Defendant, TREMONT, executed and delivered to the Plaintiffs an Amended and Restated Promissory Note, dated November 16, 2021, with a principal sum of \$418,319.54 (“Note”) (*See* Promissory Note, annexed to Motion as Exhibit “3”; *see also* Plaintiff’s Affidavit, NYSCEF Doc. No. “13” ¶ 18). The Plaintiffs allege that, pursuant to the Note, the Defendant, TREMONT, was to make weekly payments in the amount of \$1,930.69 commencing on November 29, 2021 and continuing until November 9, 2026 (*Id.* at ¶ 19). Pursuant to the Note, “[t]he entire principal sum together with accrued interest thereon shall become due and payable at the option of the [Plaintiff] upon any default hereunder or upon the happening of an event constituting a default under any other agreements between [Defendant] and [Plaintiff]” at an interest rate of eighteen percent (18%) (*See* Note, annexed to Motion as Exhibit “3” at p. 2). The Plaintiffs allege that the Defendant, TREMONT, “defaulted pursuant to the terms of the Note because it failed to make payment under the Supply Agreement” (*See* Complaint, annexed to Motion as Exhibit “7” at ¶ 53). The Court notes that the Plaintiff does not specify a default date. However, on January 18, 2024, the Plaintiffs allege that a Demand letter was sent to the Defendants via email and certified mail, demanding payment of the outstanding debt in regard to the Supply Agreement and notifying the Defendants of their default under the Note (*See* Plaintiff’s Affidavit, NYSCEF Doc. No. “13” ¶ 25; *see also*

Demand Letter, annexed to Motion as Exhibit “6”). As such, the Plaintiffs allege that as of January 18, 2024, the Defendant, TREMONT, was indebted to the Plaintiffs “under the Note for the unpaid principal balance of \$268,809.82 and unpaid interest in the sum of \$8,064.29” (*See* Complaint, annexed to Motion as Exhibit “7” at ¶ 55). Moreover, the Plaintiffs allege that despite notice and due demand, the Defendants failed to pay the amount due (*See* Plaintiff’s Affidavit, NYSCEF Doc. No. “13” ¶ 27). As such, pursuant to TREMONT’s alleged default under the Note, the Plaintiffs seek the unpaid balance of \$268,809.82, together with interest from January 19, 2024.

The Plaintiffs allege that the Defendant, ABUZAHRIEH, executed and delivered to the Plaintiffs an absolute and unconditional guaranty of payment of “all indebtedness, obligations, liabilities and agreements of any kind of [Defendant TREMONT] to the [Plaintiffs], now existing or hereafter arising” dated August 28, 2019 (*See* 2019 Guaranty, annexed to Motion as Exhibit “4”). Furthermore, the Plaintiffs allege that the Defendant, ABUZAHRIEH, reaffirmed his personal guarantee of TREMONT’s financial obligation to the Plaintiffs on November 16, 2021 (*See* 2021 Guaranty, annexed to Motion as Exhibit “5”).

Pursuant to CPLR § 3215, a plaintiff may move for a default judgment against a defendant who fails to answer or otherwise appear in the action within one year of the default. Pursuant to CPLR § 3215 (f), the movant must provide: (i) proof of service of the summons and complaint; (ii) an affidavit by the party setting forth the facts constituting the claim; (iii) proof of the default and/or amount due.

The Plaintiffs commenced this action by the filing of a Summons and Verified Complaint on or about May 28, 2024 (*See* Summons and Complaint, annexed to Motion as Exhibit “7”). The Plaintiffs submit proof that service was effectuated upon the Defendant, TREMONT, *via* the Secretary of State pursuant to Business Corporation Law (“BCL”) § 306 on May 31, 2024 (*See* Affidavit of Service, annexed to Motion as Exhibit “8”). The Plaintiffs submit proof that service was effectuated upon the Defendant, ABUZAHRIEH, on June 3, 2024, by delivering a copy of the Summons and Complaint to Naiema Abuzahrieh, family member, a person of suitable age and discretion, and thereafter mailing a copy of same to ABUZAHRIEH on June 4, 2024 (*See* Affidavit of Service, annexed to Motion as Exhibit “10”). The Plaintiffs also submitted proof of compliance with the additional mailing requirements of CPLR § 3215(g) upon the Defendants, TREMONT and ABUZAHRIEH, on June 5, 2024 (*See* Affidavit of Additional Mailing, annexed to Motion as Exhibits “9” and “11”, respectively). Since the Complaint was duly verified by the Plaintiffs’ Chief Financial Officer, Pema Tshering, the Verified Complaint appropriately serves as sufficient proof of the facts constituting the claim pursuant to CPLR § 3215(f). The Plaintiffs also submit an affidavit from Pema Tshering (*See* Plaintiff’s Affidavit, NYSCEF Doc. No. “13”).

It appears from a review of the documentation presented that all necessary parties have been duly served with a notice of this application and more than thirty (30) days has elapsed since completion of service. Thus, the Defendants are in default for failing to answer or otherwise appear in this action.

Accordingly, it is hereby

ORDERED, that the unopposed motion by the Plaintiffs, ASSOCIATED SUPERMARKET GROUP, LLC and AFS CAPITAL LLC, seeking an Order pursuant to CPLR § 3215, granting a default judgment in their favor as against the Defendants, 151 E. TREMONT FOOD CORP. and HIKMAT ABUZAHRIEH, is **GRANTED**, and the Plaintiffs are entitled to the entry of a money judgment for the sum of \$72,313.78, together with statutory interest from March 23, 2024, and damages for future lost profits in the amount of \$16,500.00; and a money judgment for the sum of \$268,809.82, together with statutory interest from January 19, 2024, plus the statutory costs and disbursements of this action, as against the Defendants, jointly and severally; and it is further

ORDERED, that counsel for the Plaintiffs shall serve a copy of this Order upon the Defendants at their last known respective address(es) by certified mail, return receipt requested, **AND** by regular mail, within twenty (20) days of the date of entry of this Order. **PROOF OF SERVICE MUST BE FILED WITH THE COURT.**

This constitutes the decision and Order of this Court.

DATED: Mineola, New York
January 7, 2025



Hon. Randy Sue Marber, J.S.C.
XXX

ENTERED

Jan 10 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE