

Digs On 3rd LLC v Ackerman 9 DeKalb Ave. LLC

2026 NY Slip Op 31334(U)

April 1, 2026

Supreme Court, New York County

Docket Number: Index No. 650398/2025

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

-----X

DIGS ON 3RD LLC,

Plaintiff,

- v -

ACKERMAN 9 DEKALB AVENUE LLC,ACKERMAN
MANAGEMENT AND DEVELOPMENT LLC,ARIEL
ACKERMAN

Defendant.

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INDEX NO. 650398/2025

MOTION DATE 10/30/2025

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67

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

Background

The dispute in this case involves a real property transaction for the building located at 340-360 Flatbush Avenue in Brooklyn, also known as 9 DeKalb, or the Brooklyn Tower, known as the tallest skyscraper in Brooklyn. Before the Court is Plaintiff Digs On 3rd LLC's motion for a default judgment against defendants Ackerman 9 Dekalb Avenue LLC, Ackerman Management and Development LLC, and Ariel Ackerman. In addition, defendants cross move to compel arbitration.

Discussion

I. Motion for Default Judgment

"A party seeking a default judgment must submit proof of service of the summons and the complaint and "proof of the facts constituting the claim, the default and the amount due"

1 The Court would like to thank Special Master to the Court, Jason Lowe, Esq. for his assistance in this matter.

(*Rosenstein v Permanent Mission of the Republic of Sierra Leone to the United Nations*, 217 AD3d 553, 554 [1st Dept 2023] quoting CPLR 3215[f]). A party may defeat a motion pursuant to CPLR 3215 by showing a reasonable excuse for default and a meritorious defense. *Leslie J. Garfield & Co., Inc. v Evans*, 242 AD3d 663, 664 [1st Dept 2025].

In this case, Plaintiff submitted proof of service of the summons and complaint and proof of the facts constituting the claim. Defendant Ackerman 9 Dekalb Avenue LLC argues that it has a reasonable excuse for default because service on it was not proper. Nevertheless, there is no question that an authorized agent for Ackerman 9 Dekalb Avenue LLC was served via its Delaware Registered Agent. CPLR §311-a (a)(iii) allows for service to be delivered “to any other agent authorized by appointment to receive process”. Therefore, delivery to the Delaware Registered Agent was proper service of process.

Similarly, Ackerman Management and Development LLC argues that it has a reasonable excuse for default because the address with the New York Secretary of State had not been properly updated and therefore notice of the lawsuit was not received until later. It is the responsibility of Defendant Ackerman Management and Development LLC to keep its address properly updated with the New York Secretary of State. Therefore, under the circumstances of this case, this does not serve as a reasonable excuse for default.

Defendant Ariel Ackerman argues he has a reasonable excuse for default because he was working for a foreign government during an active war which caused him to have no communications or delays in communication. A party not having full ability to communicate due to service of a government in a time of war is a reasonable excuse for default. Defendant Ackerman raises several affirmative defenses including the statute of limitations and defenses

based on an operating agreement, that demonstrates a meritorious defense. Therefore, the motion for default judgment with regards to Defendant Ackerman will be denied.

II. Motion To Compel Arbitration

Separately, Defendants move to compel arbitration based on a section in an operating agreement that Plaintiff is a party to. The arbitration provision states, “Any dispute as to whether the Managing Member has become a Failing Member under Section 6.4(a) shall be resolved by final and binding arbitration in New York County, New York, administered by JAMS in accordance with JAMS Streamlined Arbitration Rules and Procedures in effect at that time.” As the dispute in this action is not within the scope of the arbitration clause, the motion to compel arbitration is denied.


Accordingly, it is hereby

ORDERED that Plaintiff Digs On 3rd LLC’s motion for a default judgment against defendants Ackerman 9 Dekalb Avenue LLC, Ackerman Management is granted and an inquest for damages will be conducted at the time of trial or other such resolution of this matter; and it is further

ORDERED that Plaintiff Digs On 3rd LLC’s motion for a default judgment against defendant Ariel Ackerman is denied and Defendant Ariel Ackerman shall respond to the Complaint within 20 days of being served with the notice of entry of this Order; and it is further

ORDERED that defendants Ackerman 9 Dekalb Avenue LLC, Ackerman Management and Development LLC, and Ariel Ackerman’s motion to compel arbitration is denied; and it is further

ORDERED that any other relief requested and not otherwise discussed above is denied.

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4/1/2026
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE