

New York City Hous. Auth. v McBride

2018 NY Slip Op 32390(U)

September 21, 2018

Supreme Court, New York County

Docket Number: 450041/2018

Judge: Kathryn E. Freed

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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. KATHRYN E. FREED PART IAS MOTION 2
Justice

-----X
NEW YORK CITY HOUSING AUTHORITY, INDEX NO. 450041/2018
Plaintiff, MOTION DATE _____
- v - MOTION SEQ. NO. 001

CAMMIE MCBRIDE and FRANK MCBRIDE, DEFISION AND ORDER
Defendants.

-----X
The following e-filed documents, listed by NYSCEF document number (Motion 001) 28, 29
were read on this motion to/for DEFAULT JUDGMENT

Upon the foregoing documents the motion is **granted without opposition.**

In this action seeking unpaid monies due pursuant to a "Stipulation as to Monies Owed," plaintiff New York City Housing Authority (hereinafter "NYCHA") moves, pursuant to CPLR 3215, for a default judgment as against defendant Cammie McBride ("Cammie") and further asks that the action against defendant Frank McBride ("Frank") be severed and preserved. After a review of plaintiff's motion papers, as well as the relevant statutes and case law, the motion, which is unopposed, is **granted.**

FACTUAL AND PROCEDURAL BACKGROUND:

Plaintiff, a public corporation in New York City, administers the Section 8 Housing Assistance Program, which is established to provide, *inter alia*, housing for tenants who qualify for rent subsidies based on their reported incomes. Plaintiff determined that the defendants, who

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1 of 4

were recipients of a Section 8 subsidy, had submitted false financial statements about their income and had therefore received excess support payments or paid a lesser rent than they were entitled to, resulting in defendants owing plaintiffs the sum of \$33,841.00 in overpayments. The defendants acknowledged this “Total Overpayment” and executed a “Stipulation as to Monies Owed the New York City Housing Authority” on August 28, 2006. Doc. No. 2. Defendants agreed to pay the amount owed in \$150.00 monthly installments. However, the defendants defaulted in the payments. The last payment tendered was June 6, 2012, leaving an amount of \$26,866.00 due and owing. Pursuant to the terms of the said agreement, the entire amount is now due and payable due to the default.

This action was commenced by the filing of a summons and verified complaint on December 19, 2017. Doc. No. 1. An Affidavit of Service, attesting to service on a person of suitable age and discretion, was made on Cammie on January 27, 2018, with an additional mailing on January 30, 2018, and was filed with the Court on February 6, 2018. Doc. No. 4. The process server also attests that he asked the person on whom he served process, allegedly a relative of defendant Cammie, if she was either in the military service of the United States or a dependant of someone in the military, to which he responded in the negative. Id.

Plaintiff now moves, pursuant to CPLR 3215, for a default judgment against Cammie. In support of the motion, plaintiff submits, among other things, an affirmation of its attorney, Javier O. Hidalgo, Esq., an associate of the law firm of Simon Meyrowitz & Meyrowitz, P.C., who attests that plaintiff has complied with CPLR 3215, that defendant’s time to answer or otherwise respond has elapsed, and that defendant has failed to interpose an answer. An affidavit of service

of the within motion is annexed as Doc. No. 26. In addition to the affirmation of Hidalgo, an affirmation of Maria Lopez, the Assistant Director of the Revenue and Receivables for NYCHA, is also annexed to the motion. Doc. No. 20. Lopez attests to having examined plaintiff's records and to the accuracy of the complaint.

LEGAL CONSIDERATIONS:

CPLR 3215(a) provides, in pertinent part, that "[w]hen a defendant has failed to appear, plead or proceed to trial..., the plaintiff may seek a default judgment against him." It is well settled that "[o]n a motion for leave to enter a default judgment pursuant to CPLR 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party's default in answering or appearing." *Atlantic Cas. Ins. Co. v RJNJ Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011). Moreover, a default in answering the complaint is deemed to be an admission of all factual statements contained in the complaint and all reasonable inferences that flow from them. *See Woodson v Mendon Leasing Corp.*, 100 NY2d 63 (2003).

Here, plaintiff has submitted proof of service of the summons and complaint on defendant Cammie as well as proof of his failure to answer or otherwise appear in this action. Further, through the affidavit of Lopez and the affirmation its attorney in support of the motion, plaintiff has established the facts giving rise to the claim. Therefore, plaintiff is entitled to a default judgment against Cammie McBride in the amount of \$26,866.00 plus interest from July 15, 2012. The action is severed and will continue as to plaintiff's claims against defendant Frank McBride.

Therefore, in light of the foregoing, it is hereby:

ORDERED that the motion by plaintiff New York City Housing Authority for a default judgment against defendant Cammie McBride is granted in the amount of \$26,866.00, plus interest from July 15, 2012, as calculated by the Clerk; and it is further,

ORDERED that plaintiff New York City Housing Authority shall serve a copy of this order on the Trial Support Office at 60 Centre Street, Room 158, as well as on defendants Cammie McBride and Frank McBride; and it is further,

ORDERED that the action is severed and will continue as to plaintiff's claims against defendant Frank McBride; and it is further

ORDERED that this constitutes the decision and order of this Court.

9/21/2018
DATE


KATHRYN E. FREED, J.S.C.

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