

DDCM Broome Realty LLC v May Bee Bohemian LLC
2018 NY Slip Op 32892(U)
November 8, 2018
Supreme Court, New York County
Docket Number: 657414/2017
Judge: Joel M. Cohen
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOEL M. COHEN PART IAS MOTION 45

Justice

INDEX NO. 657414/2017
MOTION DATE 10/12/2018
MOTION SEQ. NO. 001

DDCM BROOME REALTY LLC AND SMGB BROOME LLC,
Plaintiff,

- v -

MAY BEE BOHEMIAN LLC, WESLEY NOFFS, RUPERT NOFFS
AND, MATTHEW BENNETT

Defendant.

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents:

Plaintiffs DDCM Broome Realty LLC and SMGB Broome LLC move for a default judgment, pursuant to CPLR § 3215p, against Defendants May Bee Bohemian LLC, Wesley Noffs, Rupert Noffs, and Matthew Bennett, for failure to timely appear, answer, or otherwise move with respect to the complaint. For the reasons described below, the motion for default judgment is granted.

Plaintiffs have submitted un rebutted evidence demonstrating compliance with the requirements of CPLR § 3215. Therefore, Plaintiffs' motion for default judgment is granted as to liability. The relief sought in the Verified Complaint as to the first cause of action is for a sum certain of \$279,093.60, with statutory interest of 9% as of July 1, 2017. As such, Plaintiffs' motion for default judgment is granted as to damages for the first cause of action (payments due and owing pursuant to the Lease). The relief sought for the second cause of action (expenses

incurred in mitigation) is not for a sum certain, and Plaintiffs shall be directed to an Inquest to determine damages as to that claim.

Plaintiffs also seek attorneys' fees. Claims for attorneys' fees "are not ordinarily amenable to characterization as claims for 'sums certain.'" *Arent Fox Kintner Plotkin & Kahn v. Lurzer GmbH*, 297 A.D.2d 590 (1st Dep't 2002); *Reynolds Secs. v. Underwriters Bank & Trust Co.*, 44 N.Y.2d 568 at 572 (1978) (holding that to be considered a "sum certain" there can be no dispute as to the amount due). Therefore, because attorneys' fees are not treated by courts as a sum certain, Plaintiffs shall be directed to an Inquest to determine the issue of attorneys' fees.

Defendants may seek a vacatur of the instant default judgment if they can satisfy the requirements of CPLR § 5015, CPLR § 317, or any other relevant law.

ORDERED Plaintiffs' Motion for a Default Judgment against Defendants is Granted, and the Clerk of the Court is directed to enter a judgment in favor of Plaintiffs and against Defendants for the amount alleged in the first cause of action in the complaint, \$279,093.60, with statutory interest of 9% as of July 1, 2017, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED Plaintiffs' request for damages as to the second cause of action is referred to a JHO to hear and determine; and it is further

ORDERED Plaintiff's request for attorneys' fees is referred to a JHO to hear and determine; and it is further

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to determine the damages owed to Plaintiffs; and it is further

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to determine the attorneys' fees owed to Plaintiff; and it is further

ORDERED that the powers of the JHO/Special Referee to determine shall not be limited further than as set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119 M, 646-386-3028 or spref@courts.state.ny.us) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this Court at www.nycourts.gov/suptctmanh at the "Local Rules" link), shall assign this matter to an available Special Referee to determine as specified above; and it is further

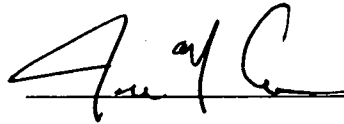
ORDERED that plaintiff's counsel shall serve a copy of this order with notice of entry on defendant within five days and that counsel for plaintiff shall, after thirty days from service of those papers, submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (which can be accessed at <http://www.nycourts.gov/courts/1jd/suptctmanh/refpart-infosheet-10-09.pdf>) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR § 4318) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and that the parties shall appear for the reference hearing, including with all such witnesses and evidence as they may seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referee's Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue specified above shall proceed from day to day until completion.

This constitutes the Decision and Order of the Court.

HON. JOEL M. COHEN
J.S.C.



11/8/2018
DATE

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