

New York City Hous. Auth. v McBride

2019 NY Slip Op 30370(U)

February 14, 2019

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 2EFM

Justice

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INDEX NO. 450041/2018

NEW YORK CITY HOUSING AUTHORITY,

MOTION DATE 04/14/2019

Plaintiff,

MOTION SEQ. NO. 002

- v -

CAMMIE MCBRIDE, FRANK MCBRIDE

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 40, 41, 42, 43, 44, 45, 46, 47, 48

were read on this motion to/for JUDGMENT - DEFAULT

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 Frank McBride ("Frank"). 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

1 A default Judgment was previously granted against Cammie McBride on 9/21/2018. Doc. No. 31.

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. 46. 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 said agreement, upon a default, the entire amount is now due and payable.

This action was commenced by the filing of a summons and verified complaint on or about, December 19, 2017. Doc. No. 1. An Affidavit of Service, attesting to service on a person of suitable age and discretion, allegedly co-tenant Jackie Doe, was made on Frank on October 10, 2018, with an additional mailing on October 11, 2018, and was filed with the Court on or about October 17, 2018. Doc. No. 35.

Plaintiff now moves, pursuant to CPLR 3215, for a default judgment against Frank. In support of the motion, plaintiff submits, among other things, an affirmation of its attorney, Matthew A. Kruger, Esq., an associate of the law firm of Simon Meyrowitz & Meyrowitz, P.C., who attests that plaintiff has complied with CPLR 3215, and that defendant's time to answer or otherwise respond has elapsed and that defendant has failed to interpose an answer. Doc. No.41. Additionally, included is an affidavit of service of the within motion, Doc. No. 45. In addition to the affirmation of Kruger, an affirmation of Maria Lopez, the Assistant Director of the Revenue

and Receivables for NYCHA is also annexed to the motion. Doc. No. 42. Lopez attests having made an examination of plaintiff's records and attests to the accuracy of the complaint. An Affidavit of non-military service is annexed as Doc. No. 44.

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 Frank 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 Frank McBride in the amount of \$26,866.00 plus interest from June 6, 2012.

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

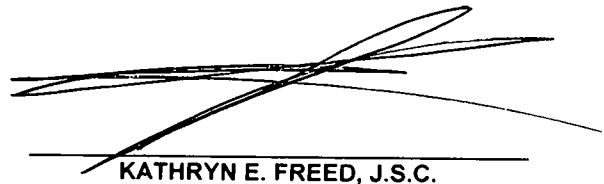
ORDERED that the motion by plaintiff New York City Housing Authority, for a default judgment against defendant Frank McBride is granted in the amount of \$26,866.00, plus interest from June 6, 2012, as calculated by the Clerk; and it is further,

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

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

2/14/2019

DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE