

A&L 1664 LLC v Jaspar Hospitality LLC
2022 NY Slip Op 32976(U)
September 6, 2022
Supreme Court, New York County
Docket Number: Index No. 158896/2020
Judge: Nancy M. Bannon
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NANCY M. BANNON PART 42

Justice

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A&L 1664 LLC and G&G 1664 LLC

Plaintiff,

- v -

JASPAR HOSPITALITY LLC,

Defendant.

-----X

INDEX NO. 158896/2020

MOTION DATE _____

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 22, 23, 24, 25, 26, 27, 28, 29

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

In this breach of contract action seeking to recover \$150,856.00 in unpaid rent, the plaintiff landlord, A&L 1664 LLC (A&L) and G&G 1664 LLC (G&G) (“plaintiff”), owner of commercial property at 1664 First Avenue in Manhattan, move pursuant to CPLR 3125 for default judgement against the defendant, Jaspar Hospitality, LLC. The defendant defaulted in its rent obligations starting on May 1, 2020. By an order dated December 16, 2020, the plaintiff’s motion was denied without prejudice. Upon remand by the Appellate Division, First Department, the court restored the motion and permitted the plaintiff to submit supplemental papers to include any attorney’s fees application.

“On 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 (see CPLR 3215[f]; Allstate Ins. Co. v Austin, 48 AD3d 720, 720).” Atlantic Cas. Ins. Co. v RJNJ Services, Inc., 89 AD3d 649 (2nd Dept. 2011). The proof submitted must establish a prima facie case. See Silberstein v Presbyterian Hosp., 95 AD2d 773 (2nd Dept. 1983).

In support of the motion, the plaintiffs submitted, *inter alia*, the summons and complaint, proof of service, the subject lease agreement, a rent ledger, and legal fee invoices. Its supplemental papers consist an affidavit of Anthony Carollo, the president and managing

partner of plaintiff and an affirmation of Allison Furman, counsel for the plaintiff, as well as an updated rent ledger showing no payments made through March 1, 2022, attorney billing records and invoices.

The plaintiff's proof establishes, *prima facie*, its entitlement to relief on the first cause of alleging breach of contract. The plaintiff's proof demonstrates (1) the existence of a contract, (2) the plaintiff's performance under the contract, (3) the defendants' breach of that contract, and (4) resulting damages. See Second Source Funding, LLC v Yellowstone Capital, LLC, 144 AD3d 445 (1st Dept. 2016); Harris v Seward Park Housing Corp., 79 AD3d 425 (1st Dept. 2010); Flomenbaum v New York Univ., 71 AD3d 80 (1st Dept. 2009). It is well-settled that a lease is a contract which is subject to the same rules of construction as any other agreement. See George Backer Mgt. Corp. v Acme Quilting Co., Inc., 46 NY2d 211 (1978); New York Overnight Partners, L.P. v Gordon, 217 AD2d 20 (1st Dept. 1995), *aff'd* 88 NY2d 716 (1996). Having failed to answer, the defendant is "deemed to have admitted all factual allegations in the complaint and all reasonable inferences that flow from them." Woodson v Mendon Leasing Corp., 100 NY2d 62, 70-71 (2003).

In its supplemental papers, the plaintiff seeks attorney's fees, submitting an attorney's affirmation, billing records and invoices which demonstrate that it incurred fees in the sum of \$5,856.00. The plaintiff is entitled to contractual attorney's fees under Articles 19 and 88 of the lease, which provide that "If Owner...makes any expenditures or incurs any obligations for the payment of money, including...reasonable attorney's fees in instituting, prosecuting, or defending any actions or proceeding..." and "[I]f the landlord, in connection with any default of the Tenant...make any expenditures or incurs any obligations for the payment of money for attorney's fees in prosecuting or defending any proceedings relating thereto..." (see generally Fleming v Barnwell Nursing Home and Health Facilities, Inc., 15 NY3d 375 [2010]; Coopers & Lybrand v Levitt, 52 AD2d 493 [1st Dept. 1976]). The court finds the amount of fees requested to be reasonable after considering "the time and labor expended, the difficulty of the questions involved and the required skill to handle the problems presented, the attorney's experience, ability, and reputation, the amount involved, the customary fee charged for such services, and the results obtained (citations omitted)." Matter of Barich, 91 AD3d 769, 770 (2nd Dept 2012). Based on the foregoing, the plaintiffs have established entitlement to legal fees in the amount of \$5,856.00 as reflected in the invoice submitted to the court.

In its supplemental papers, the plaintiff also seeks (1) to amend the caption to correct the spelling of the defendant's name from "Jaspar Hospitality LLC" to "Jasper Hospitality LLC" and (2) a judgment for additional unpaid rent of \$302,045.00 accrued after the complaint was filed, between January 2021 and March 2022, bringing the total amount of rent to \$452,901.00. The application to amend is granted but the application for additional accrued rent is denied.

Although no motion was made to amend the caption pursuant to CPLR 3025, the proposed amendment is minimal as it merely corrects one letter in the defendant's name to match the name on the subject lease. Leave to amend a pleading should be freely granted absent evidence of substantial prejudice or surprise, or unless the proposed amendment is palpably insufficient or patently devoid of merit. See CPLR 3025(b); JPMorgan Chase Bank, N.A. v Low Cost Bearings NY, Inc., 107 AD3d 643 (1st Dept. 2013). The burden is on the party opposing the motion to establish substantial prejudice or surprise if leave to amend is granted. See Forty Cent. Park S., Inc. v Anza, 130 AD3d 491 (1st Dept. 2015). No possible prejudice or surprise could result from this amendment.

However, the plaintiff's application by affirmation to increase the demand for unpaid rent threefold, from \$150,856.00 to \$452,901.00, cannot be granted. CPLR 3215(b) expressly provides that a default "judgment shall not exceed in amount or differ in type from that demanded in the complaint or stated in the notice served." CPLR 3215(b); see Mt. Hawley Ins. Co. v Am. States Ins. Co., 139 AD3d 497 (1st Dept. 2016); P & K Marble, Inc. v Pearce, 168 AD2d 439 (2nd Dept. 1990); Gluck v W. D. Allen Mfg. Co., 53 AD2d 584 (1st Dept. 1976). The plaintiff provides no basis to depart from this well-settled law that a default judgment may not exceed the amount demanded in the complaint. The plaintiff is not without remedy, however, as it may seek relief in a separate action.

Generally, interest is computed "from the earliest ascertainable date the cause of action existed". CPLR 5001(b). In a breach of contract action, interest "accrues from the time of an actionable breach." Kellman v Mosley, 60 AD3d at 457 (1st Dept. 2009); see generally Brushton-Moira Cent. Sch. Dist. v Fred H. Thomas Assocs., P.C., 91 NY2d 256 (1998); Love v State of New York, 78 NY2d 540 (1991). The plaintiff is entitled to statutory interest from May 1, 2020.

Accordingly, it is


ORDERED that, upon the plaintiff’s application, in effect, pursuant to CPLR 3025, the caption is amended to correct the spelling of the name of the defendant to “*Jasper Hospitality, LLC*”, and it is further,

ORDERED that the plaintiff’s motion pursuant to CPLR 3215 for leave to enter a default judgment is granted, without opposition, to the extent that it may enter judgment against the defendant in the sum of \$150,856.00, plus costs and statutory interest from May 1, 2020, plus an additional judgment in the sum of \$5,856.00 for attorney’s fees, and the motion is otherwise denied without prejudice, and it is further

ORDERED that the Clerk of the Court is directed to amend the caption and enter judgment in accordance with this order.

This constitutes the Decision and order of the court.

9/6/2022
DATE



NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

CHECK ONE:

CASE DISPOSED
GRANTED

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART

OTHER