

Zim Props. Corp. v Anani Corp
2022 NY Slip Op 33267(U)
September 28, 2022
Supreme Court, New York County
Docket Number: Index No. 652427/2021
Judge: Louis L. Nock
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LOUIS L. NOCK PART 38M

Justice

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ZIM PROPERTIES CORP.,

Plaintiff,

- v -

ANANI CORP, ABDELRAHMAN ELENANIM

Defendant.

INDEX NO. 652427/2021

MOTION DATE 07/19/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, it is ordered that

Plaintiff's motion for entry of a default judgment pursuant to CPLR 3215 is granted on default and without opposition, based upon the following memorandum decision

Background

In this action for breach of a commercial lease, plaintiff Zim Properties Corp. ("Zim") moves for entry of a default judgment against defendant Anani Corp. ("Anani"). Zim does not seek entry of a default judgment against defendant Abdelrahman Elenanim ("Elenanim").

Zim is the record owner of 1618 Avenue M, Brooklyn, New York (NYSCEF Doc. No. 7, Zimbaro Aff. dated July 14, 2021, Exhibit A, Deed dated February 18, 1972 ["Deed"]). Zim and Anani are parties to a commercial lease whereby Zim leased the ground floor of the building located at 1618 Avenue M, Brooklyn, New York (the "premises") for a term running from February 1, 2018 to January 31, 2028 (id., Exhibit B, Lease dated February 8, 2018 ["Lease"]). Relevant to the instant motion, the Lease provides that Anani would pay annual rent of

\$64,800.00 per year (*id.* at 1), increased every year by 3.5% over the previous year (*id.*, ¶ 43).

The lease further provides that if Zim,

“in connection with any default by [Anani] in the covenant to pay rent hereunder . . . incurs any obligations for the payment of money, including but not limited to reasonable attorney’s fees in instituting, prosecuting, or defending any action or proceeding, such . . . obligations so incurred with interest and costs shall be deemed to be additional rent” (*id.*, ¶ 19).

Zim, by the affidavit of its corporate officer Louis Zimbaro, states that Anani vacated the premises prior to the expiration of the lease as of April 1, 2020 owing base rent, which at the time was paid at a monthly rate of \$5,784.16 pursuant to the escalation clause in the Lease (Lease at 1, ¶ 43; Zimbaro Aff., ¶¶ 8, 10-11). Anani failed to pay rent from April 1, 2020 through February 28, 2021, at which time Zim relet the premises to a new tenant (Zimbaro Aff., ¶¶ 9, 12). Zim now seeks entry of a default judgment for the total unpaid base rent, calculated at \$63,625.76, plus interest from April 1, 2020.

Zim commenced this action by filing a summons and complaint on April 12, 2021 (NYSCEF Doc. No. 1). An affidavit of service filed on May 20, 2021 attests to service upon Anani by service upon the Secretary of State on April 23, 2021 (NYSCEF Doc. No. 3). An affidavit of additional service filed on July 16, 2021 attests to service on Anani by first class mail at its last known address at the premises on July 16, 2021 (NYSCEF Doc. No. 5). Anani has not answered the complaint or otherwise appeared in the action to date. Plaintiff now moves for entry of a default judgment against Anani. There is no opposition to the motion.

Discussion

A plaintiff that seeks entry of a default judgment for a defendant's failure to answer must submit proof of service of the summons and complaint upon the defendant, proof of the facts constituting the claim, and proof of the defendant's default (CPLR 3215). “The standard of proof

is not stringent, amounting only to some firsthand confirmation of the facts” (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). “[D]efaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them” (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). Nevertheless, “CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action” (*Guzetti v City of New York*, 32 AD3d 234, 235 [1st Dept 2006] [internal quotations and citations omitted]).

Here, Zim has met its burden on the motion by submission of the affidavit of service demonstrating service of the summons and complaint on Anani (NYSCEF Doc. No. 3), an affirmation of its counsel, Mark Krassner, Esq., attesting to the default (NYSCEF Doc. No. 10, ¶ 6), the verified complaint (NYSCEF Doc. No. 1), and the affidavit of Louis Zimbaro as detailed above, which attests to the facts constituting plaintiff’s claim (NYSCEF Doc. No. 7). In his affidavit, Zimbaro reaffirms the allegations of the verified complaint and attests to the amount owed. As set forth in the verified complaint, Zim leased the premises to Anani for a term of ten years, at a yearly rent of \$64,800, rising by 3.5% every year thereafter, and that Anani vacated the premises prior to the expiration of the lease as of April 1, 2020 (NYSCEF Doc. No. 1, ¶¶ 12-14). As set forth in the verified complaint and confirmed in Zimbaro’s affidavit, Anani owes unpaid rent of \$63,625.76, plus interest from April 1, 2020, which covers the period from when Anani vacated the premises early through Zim reletting the premises as of February 28, 2021 (NYSCEF Doc. No. 1, ¶¶ 13-14; NYSCEF Doc. No. 7, ¶¶ 11-13). Therefore, Plaintiff’s motion for entry of a default judgment against Anani is granted.

Accordingly, it is hereby

ORDERED that the motion is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff Zim Properties Corp. and against defendant Anani Corp. in the sum of \$63,625.76, with interest at the statutory rate from April 1, 2020, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the action against defendant Abdelrahman Elenanim is severed and shall continue.

This memorandum opinion constitutes the Decision and Order of the Court.

9/28/2022
DATE

Louis L. Nock
LOUIS L. NOCK, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE