

PB 151 Grand LLC v 9 Crosby, LLC

2023 NY Slip Op 31641(U)

May 15, 2023

Supreme Court, New York County

Docket Number: Index No. 156225/2017

Judge: Frank P. Nervo

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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. FRANK P. NERVO PART 04

Justice

-----X

PB 151 GRAND LLC

Plaintiff,

- v -

9 CROSBY, LLC,

Defendant.

-----X

INDEX NO. 156225/2017

MOTION DATE 04/18/2023

MOTION SEQ. NO. 007

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 007) 201, 202, 203, 204, 205, 206

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

By decision and order on mot. seq. 006, the Court conditionally relieved petitioner’s counsel, and directed that the failure to substitute counsel by March 31, 2023, may result in a finding of default upon respondent’s further application. Petitioner did not timely substitute counsel, and this unopposed motion by respondent results.

Respondent’s motion is granted to the extent of finding petitioner in default and respondent entitled to judgment. However, notwithstanding petitioner’s default, the Court is not satisfied it can determine the amount of said judgment upon these motion papers. Put simply, while it is beyond cavil that petitioner has admitted all traversable allegations, including liability, as a consequence of its default (*Amusement Bus. Underwriters v. American Intl. Group*, 66 NY2d 878 [1985]; *Curiale v. Ardra Ins. Co., Ltd.*, 88 NY2d 268 [1996]); “plaintiff’s conclusion as to damages” is not established by default (*Amusement Bus. Underwriters v. American Intl. Group, supra*; *Curiale v. Ardra Ins. Co., Ltd.*,

supra).¹ Respondent alleges economic loss due to impacts to its business over a lengthy period of time. However, the affidavits in support of these damages are themselves outdated and, it appears to the Court, do not encompass the totality of the damages sought herein.

Accordingly, it is

ORDERED that the motion is granted to extent of finding petitioner in default and respondent entitled to damages; and it is further

ORDERED that the court having on its own motion determined to consider the appointment of a Judicial Hearing Officer (JHO) to hear and determine as follows, and it appearing to the court that a reference to the Hon. Alan C. Marin is proper and appropriate, the Hon. Alan C. Marin shall hear and determine damages and attorney's fees due respondent and respondent's counsel on default, and the entry of appropriate judgment on same; and it is further

ORDERED that any appearance or participation by petitioner at the damages hearing shall be limited to the amount of damages due respondent and/or respondent's counsel; and it is further

ORDERED that movant shall serve a copy of this decision and order upon petitioner via certified mail within 10 days of this order; and it is further

¹ Whether a default is premised upon failure to answer or upon striking of an answer is of no moment (*Abbas v. Cole*, 44 AD3d 31, 33 [2d Dept 2007])

ORDERED that the powers of the JHO not be limited beyond the limitations set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk, as may be necessary, for placement upon the calendar of the Hon. Alan C. Marin, serving as JHO, which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the “References” link), shall assign this matter at the initial appearance to the Hon. Alan C. Marin to hear and determine as specified above; and it is further

ORDERED that respondent shall, within 15 days from the date of this Order, submit to the Special Referee Clerk an Information Sheet (accessible at the “References” link on the court’s website) 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 parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance before the Hon. Alan C. Marin, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part or unless directed otherwise by the Hon. Alan C. Marin; and it is further

ORDERED that, except as otherwise directed by the Hon. Alan C. Marin for good cause shown, the trial of the issue(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules).

THIS CONSTITUTES THE DECISION AND ORDER OF REFERENCE OF THE COURT

5/15/2023
DATE

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
 GRANTED IN PART
 SUBMIT ORDER
 FIDUCIARY APPOINTMENT

J.S.C.
 OTHER
 REFERENCE



HON. FRANK P. NERVO