

Jaquez v Duncraggen Realty Corp.

2023 NY Slip Op 32738(U)

August 7, 2023

Supreme Court, New York County

Docket Number: Index No. 153275/2023

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

MODESTO AGUERO JAQUEZ,

Plaintiff,

- v -

DUNCRAGGEN REALTY CORP., 875 W. 181 OWNERS
CORP.

Defendant.

-----X

INDEX NO. 153275/2023

MOTION DATE 05/30/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 23, 24, 25

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

Plaintiff moves for a default judgment as against defendant Duncraggen Realty Corp. The motion is unopposed.¹

CPLR § 3215(a) provides that a plaintiff may obtain a default judgment when a defendant has failed to appear or plead. The plaintiff must provide proof of service of the summons and complaint, proof of the underlying facts constituting the claim, and proof of default (CPLR § 3215(f); *see also SRMOF II 2012-I Trust v. Tella*, 139 AD3d 599 [1st Dept 2016]; *Green Tree Servicing, LLC v. Cary*, 106 AD3d 691, 692 [2d Dept 2013]). Where a default judgment is sought against a corporation, which has been served via the Secretary of State, the

¹ Defendant 875 W. 181 Owners takes no position on the motion, although it notes that upon its information and belief the owner of the property is not Duncraggen Realty Corp., as named by plaintiff, but rather The Duncraggen Realty Corp., and annexes that entity's service address on file with the Secretary of State.

plaintiff must also demonstrate service on the corporate-defendant via mail at its last known address (CPLR § 3215[g][4]).

Here, plaintiff has established it served Duncraggen Realty Corp. via the Secretary of State and mail to its last known addresses (NYSCEF Doc. Nos. 4 and 15). Plaintiff has further provided proof of the underlying claim (NYSCEF Doc. No. 18). Finally, defendant Duncraggen Realty Corp.'s default is evinced by its failure to appear in this matter.

Accordingly, it is
ORDERED that the motion is granted; and it is further

ORDERED, DECLARED, and ADJUDGED that plaintiff, Modesto Agüero Jaquez, has judgment on default and does recover as against defendant Duncraggen Realty Corp., 708 West 192 Street Suite 1K New York, NY 10040, in an amount to be determined at inquest to be held at the same time as trial, absent order otherwise; and it is further

ORDERED that the matter shall proceed as against defendant 875 W 181 Owners Corp., and it is further

ORDERED that the Court issues the following discovery order in consideration of the parties' proposed conference order (NYSCEF Doc. No. 20):

OUTSTANDING DISCOVERY DEMANDS

ORDERED that all parties shall serve courtesy copies of any outstanding discovery demands not otherwise addressed herein within 14 days, all parties shall respond thereto within 20 days of receipt of courtesy copy. The failure to timely serve a courtesy copy of an outstanding discovery demand may constitute waiver of such discovery; the failure to timely serve a response to a timely served courtesy copy may result in sanctions, including but not limited to the striking of pleadings, preclusion of evidence at trial, or sanctions against counsel, in the Court's discretion upon further application; and it is further

ORDERED that defendant 875 W 181 Owners Corp. shall provide insurance coverage information to plaintiff within 20 days of this order; and it is further

ORDERED that all parties shall exchange names and addresses of all eyewitnesses and notice witnesses, statements of opposing parties, and photographs, or if none, provide an affirmation to that effect within 20 days of this order; and it is further

AUTHORIZATIONS

ORDERED that plaintiff shall serve authorizations for employment records for a period of five years prior to the accident to the date of the accident within 20 days of this order; and it is further

ORDERED that failure to timely serve employment authorizations may result in preclusion of evidence on any lost wages claim at the time of trial; and it is further

ORDERED that demand for discovery and inspection shall be served by all parties no later than November 23, 2023; and it is further

DEPOSITIONS

ORDERED that plaintiff shall appear for deposition, and such deposition shall be completed, on September 27, 2023; and it is further

ORDERED that defendant 875 W 181 Owners Corp. shall appear for deposition, and such deposition shall be completed, on October 4, 2023; and it is further

ORDERED that non-party depositions, if any, shall be noticed at least 30 days prior to deposition date, or shall be deemed waived, and shall be completed no later than December 29, 2023; and it is further

ORDERED that depositions shall be held in-person unless the parties agree to conduct same via virtual/electronic means; and it is further

ORDERED that post-deposition demands shall be served within 20 days of deposition giving rise to demand or shall be deemed waived; and it is further

ORDERED that responses to post-deposition demands shall be served within 20 days from receipt of demand; and it is further

ORDERED that the failure to timely respond to a timely post-deposition demand may result in sanctions, including but not limited to striking pleadings, preclusion of evidence, or sanctions against counsel and/or parties, in the Court's discretion upon further application; and it is further

M E D I C A L E X A M (I M E)

ORDERED that defendant 875 W 181 Owners Corp. shall serve notice of designation of plaintiff's independent medical exam (IME) within 30 days of completion of plaintiff's deposition, or same shall be deemed waived; and it is further

ORDERED that plaintiff shall appear for IME within 30 days of receipt of designation above; and it is further

ORDERED that defendant 875 W 181 Owners Corp. shall serve a copy of the IME report within 45 days of completion of exam; and it is further

ORDERED that failure to timely appear for a timely noticed IME or timely serve a copy of the IME report may result in sanctions, including but not limited to striking pleadings, preclusion of evidence, or sanctions against counsel and/or parties, in the Court's discretion upon further application; and it is further

O T H E R D I R E C T I V E S

ORDERED that all parties are reminded of the Uniform Rules and shall comply therewith, including depositions, demands, responses to demands, and privilege logs. The failure to comply with the Uniform Rules may constitute waiver, or result in sanctions, including but not limited to the striking of pleadings, preclusion of evidence at trial, or sanctions against counsel, in the Court's discretion upon further application; and it is further

ORDERED that impleader shall be completed within 60 days of completion of party depositions; and it is further

ORDERED that plaintiff shall file a note of issue no later than June 28, 2024; and it is further

ORDERED that the parties are reminded of the Part Rules, including those requiring extension of the note of issue deadline by motion, returnable prior to the note of issue deadline date, as well as those regarding requests for further conferences and those regarding correspondence with the Court; and it is further

ORDERED that no further conference is scheduled at this time; and it is further

ORDERED that dispositive motions, including summary judgment, shall be filed within 60 days of filing of the note of issue; and it is further
[continued on following page]

ORDERED the dates, deadlines, and directives set forth herein may not be adjourned or otherwise modified absent Court order. The failure to comply with this order may result in sanctions, including but not limited to the striking of pleadings, preclusion of evidence at trial, or sanctions against counsel, in the Court's discretion upon further application.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT

8/7/2023
DATE


HON. FRANK P. NERVO

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

J.S.C.

OTHER
 REFERENCE