

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DTRS ESSEX HOUSE, LLC,

Plaintiff,

-against-

KOLSTEIN MUSIC, INC. and MANNY ALVAREZ,

Defendant.

Index No. 152376/2025

Mot. Seq. No. 001

**PLAINTIFF'S MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT**

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Plaintiff DTRS Essex House, LLC (the “Plaintiff”) respectfully submits this Memorandum of Law in Support of Plaintiff’s Motion for Default Judgment, seeking an order: (a) pursuant to CPLR 3215, awarding a default judgment against defendants Kolstein Music, Inc. (“Kolstein”) and Manny Alvarez (“Alvarez”) (collectively, the “Defendants”) for failure to answer or otherwise appear in the matter herein; (b) awarding Plaintiff damages against Kolstein Music, Inc. in the amount of \$256,000.00, or in the alternative setting an immediate date for an inquest as to the damages Plaintiff shall be entitled to recover; (c) awarding Plaintiff damages, jointly and severally, against Manny Alvarez in the amount of \$184,125.00, or in the alternative setting an immediate date for an inquest as to the damages Plaintiff shall be entitled to recover; (d) awarding Plaintiff interest at the maximum legal rate per annum of 9.0% since December 2023; (e) awarding Plaintiff its contractual attorneys’ fees, costs and disbursements in an amount to be determined; and (f) for such other and further relief as this Court may deem just and proper.

Unless otherwise defined herein, all capitalized terms have the same meaning as set forth in the annexed the Affirmation in Support of Sana Lee (“Lee Aff.”) and the Affirmation in Support of Jesse B. Schneider (“Schneider Aff.”).

PRELIMINARY STATEMENT

This is a straightforward matter regarding Defendants’ breaches of contract with Plaintiff. Plaintiff and Kolstein entered into a written rental agreement dated as of October 21, 2021, between Plaintiff, as landlord and Kolstein, as tenant (the “Lease”), for a portion of the ground level (the “Premises”) in the building located at 153 West 58th Street, New York, New York 10019 (the “Building”).

From the commencement date of the Lease through and including today, Plaintiff has always performed all of its obligations. As further discussed in the Lee Aff., however, beginning

in December 2023, Kolstein failed to meet its rental obligations under the Lease by failing to make any of its Fixed Rent or Additional Rent payments. *See* Lee Aff. ¶ 14. The total arrears resulting from this refusal to pay is \$256,000.00 to date (the “Arrears”).

Further, on or about October 13, 2021, Alvarez executed a certain Guaranty of Lease (the “Guaranty”). The Guaranty provides that Alvarez, in order to induce Plaintiff to enter into the Lease with Kolstein, guaranteed to Plaintiff the full performance and observance of all of the agreements to be performed and observed by Kolstein in the Lease. Alvarez’s responsibilities under the Guaranty included all obligations of Kolstein under the Lease until such time that Kolstein vacated and surrendered the Premises. As discussed in the Lee Aff., however, Alvarez has failed to meet his obligations under the Guaranty by not guaranteeing the performance of Kolstein under the Lease for the time it remained in the Premises.

Accordingly, Defendants are jointly and severally liable to Plaintiff for all Fixed Rent and Additional Rent, as the Lease clearly states that Kolstein must meet its rental obligations “without any set-off, counterclaim, abatement or deduction whatsoever.” *See* Lee Aff., Exhibit B, Article 2. As set forth in more detail below, the Court should grant Plaintiff’s motion for a default judgment, as Defendants have failed to answer or otherwise appear in this action, despite Plaintiff’s meritorious causes of action.

STATEMENT OF FACTS

For a full recitation of the facts and evidence, the Court is respectfully referred to the annexed Lee Aff. and its accompanying exhibits.

STATEMENT OF PROCEDURAL HISTORY

On February 26, 2025, Plaintiff filed an Amended Summons and Amended Verified Complaint (collectively, the “Complaint”). A copy of said Complaint is annexed to the Schneider

Aff. as Exhibit 1. Plaintiff commenced this action against Defendants seeking relief for Defendants' respective breaches of contract, unjust enrichment and breach of implied covenant of good faith and fair dealing.

Kolstein was served via the New York Secretary of State on March 3, 2025, and a copy of said affidavit of service is annexed to the Schneider Aff. as Exhibit 2. Pursuant to CPLR 3215(g), on May 2, 2025, an additional copy of the Amended Summons was served on Kolstein by first class mail at its last known address, as follows: Kolstein Music, Inc., 795 Foxhurst Road, Baldwin, New York 11510. A copy of said affidavit of service is annexed Schneider Aff. as Exhibit 3.

Alvarez was served personally in Florida on March 13, 2025, and a copy of said affidavit of service is annexed to the Schneider Aff. as Exhibit 4. Pursuant to CPLR 3215(g), on May 2, 2025, an additional copy of the Amended Summons was served on Alvarez by first class mail, marked "Personal & Confidential" and addressed as follows: Manny Alvarez, 3050 Freedom Trail, Oviedo, Florida 32765. A copy of said affidavit of service is annexed Schneider Aff. as Exhibit 5.

ARGUMENT

I. DEFAULT JUDGMENT SHOULD BE AWARDED TO PLAINTIFF

A. Governing Standards for an Award of Default Judgment

CPLR 3215(a) states as follows (emphasis added):

"Default and entry. When a defendant has failed to appear, plead or proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed, the plaintiff may seek a default judgment against him. If the plaintiff's claim is for a sum certain or for a sum which can by computation be made certain, application may be made to the clerk within one year after the default. The clerk, upon submission of the requisite proof, shall enter judgment for the amount demanded in the complaint or stated in the notice served pursuant to subdivision (b) of rule 305, plus costs and interest."

Further, CPLR 320(a) states as follows (emphasis added):

“Requirement of Appearance. The defendant appears by serving an answer or a notice of appearance, or by making a motion which has the effect of extending the time to answer. An appearance shall be made within twenty days after service of the summons, except that if the summons was served on the defendant by delivering it to an official of the state authorized to receive service in his behalf or if it was served pursuant to section 303, subdivision two, three, four or five of section 308, or sections 313, 314 or 315, the appearance shall be made within thirty days after service is complete. If the complaint is not served with the summons, the time to appear may be extended as provided in subdivision (b) of section 3012.”

Any party seeking to vacate a default judgment under CPLR 5015(a)(1) must demonstrate both a reasonable excuse for the default and a meritorious cause of action. *See Abate v. Long*, 261 A.D.2d 252, 252 (1st Dep’t 1999).

B. Plaintiff Is Entitled to the Award of a Default Judgment for Defendants’ Failure to Answer or otherwise Appear in this Matter

Here, Plaintiff served Defendants by the New York Secretary of State and in person. *See* Exhibits 2, 4. As per CPLR 320(a), each Defendant was required to either answer file a notice of appearance or make a motion extending the time to answer within thirty (30) days after service of the Complaint was completed. As defendant Kolstein is a corporation, service of process was completed on March 3, 2025, the date the New York Secretary of State was served (*see* BCL § 306(b)), and service on Alvarez was completed personally in Florida on March 13, 2025 (*see* CPLR 313). Further, Plaintiff effectuated additional service on Defendants pursuant to CPLR 3215(g). *See* Exhibit 3, 5.

Despite effective service, however, Defendants have failed to answer or otherwise appear in this action, and it is now apparent that Defendants will not proceed with a defense. Defendants have willfully and deliberately failed to appear in this matter, and Defendants’ defaults herein have

prejudiced Plaintiff's ability to litigate this action expeditiously. Plaintiff has meritorious causes of action, and sound public policy and judicial equity mandate that the issues involved herein be decided on the merits.

To state a claim for breach of contract, a movant must allege (1) the existence of a valid contract, (2) the moving party's performance of the contract, (3) the non-moving party's breach of the contract, and (4) damages. *See 610 Park 8E LLC v. Best & Co., Inc.*, 2018 NY Slip Op 51738(U), at *3 (Sup. Ct. N.Y. Cnty. 2018). Courts consider a breach of a lease agreement akin to a breach of contract and consider the same aforementioned elements. *See 1035 Third Ave. LLC v. Pure Green NYC 62nd St. Corp.*, 2020 NY Slip Op 32986(U), at *9 (Sup. Ct. N.Y. Cnty. Sept. 11, 2020); *Victory State Bank v. EMBA Hylan, LLC*, 169 A.D.3d 963 (2d Dep't 2019).

Here, Plaintiff has established that: (1) the Lease was a valid contract; (2) Plaintiff has performed its obligations under the Lease; (3) Kolstein breached the Lease by failing to meet its rental obligations since December 2023; and (4) Plaintiff has suffered damages as a result of the breach. As demonstrated in the Lee Aff., beginning on or about December 2023, Kolstein stopped meeting its rental obligations under the Lease. *See Lee Afd.* ¶ 14. Regarding Fixed Rent, Kolstein was required to pay an escalating Fixed Rent for the relevant periods at issue in this action (*see* Exhibit B, Article 1), yet Kolstein has failed to pay Fixed Rent from December 2023 through the date of this motion. *See Lee Aff.* ¶ 14; Exhibit F.

Kolstein is additionally responsible under the Lease for payment of Additional Rent. *See* Exhibit B, Article 1. As further detailed in Exhibit F annexed to the Lee Aff., Kolstein has accrued Additional Rent costs from December 2023 through the date of this motion. In sum, these amounts, including Fixed Rent and Additional Rent, total \$256,000.00 through the date of this motion.

Furthermore, Plaintiff has also established the necessary elements for a breach of the Guaranty by Alvarez. Plaintiff has established that: (1) the Guaranty was a valid contract; (2) Plaintiff has performed its obligations under the Guaranty; (3) Alvarez breached the Guaranty by failing to meet his obligations since December 2023; and (4) Plaintiff has suffered damages as a result of the breach. As discussed in the Lee Aff., the Guaranty is an “absolute, unconditional and irrevocable” guarantee the obligations of Kolstein under the Lease, including payment of Fixed Rent and Additional Rent. (Lee Aff. ¶ 11; Exhibit C, § 3.) Alvarez’s responsibilities under the Guaranty include all obligations of Kolstein accrued under the Lease “prior to the vacating and surrender of the Premises.” *Id.* ¶ 13; Exhibit C, § 24. Beginning on or about December 2023, however, Kolstein stopped meeting its rental obligations under the Lease, and in turn, Alvarez failed to meet its obligations under the Guaranty. *Id.* at. ¶ 14.

Defendants have no valid excuse or defense for their deliberate breaches of the Lease and Guaranty, as Article 2 of the Lease also requires that payments of Fixed Rent and Additional Rent be made to Plaintiff “without any set-off, counterclaim, abatement or deduction whatsoever” (emphasis added). (Exhibit B, Article 2). By virtue of Defendants’ breaches, Plaintiff has been forced to incur significant expenses in bringing this motion and in attempting to collect what is owed under the Lease.

Based upon the foregoing, it is respectfully submitted that pursuant to CPLR 3215, Defendants are in default and judgment should be entered accordingly.

C. Plaintiff is Entitled to Attorneys’ Fees, Costs & Disbursements related to the Prosecution of this Action.

Section 25.1 of the Lease states as follows (emphasis added):

“Tenant shall indemnify, defend, protect and hold harmless each of the Indemnitees from and against any and all Losses, resulting from any claims ... against the Indemnitees resulting from any breach, violation or nonperformance of any

covenant, condition or agreement of this Lease on the part of Tenant to be fulfilled, kept, observed or performed.”

Lee Aff., Exhibit B, § 25.1.

“Indemnitees” is defined in the Lease to include “Landlord”, and “Losses” is defined in the Lease to include “any and all losses, liabilities, damages, claims, judgments, fines, suits, demands, costs, interest and expenses of any kind or nature (including reasonable attorneys’ fees and disbursements) incurred in connection with any claim, proceeding or judgment and the defense thereof. *See Id.*, “Definitions.”

Section 15 of the Guaranty states as follows (emphasis added):

Guarantor shall pay all the reasonable attorneys' fees, charges and expenses and all other commercially reasonable costs and expenses which are incurred by or on behalf of Landlord in the enforcement of this Guaranty.

Lee Aff., Exhibit C, § 15.

As demonstrated, Defendants have breached the Lease and Guaranty by failing to meet their rental obligations. As a result of Defendants’ breaches, Plaintiff has had to incur significant expenses in its prosecution of this action. As such, Plaintiff respectfully requests that this matter be immediately set down for an inquest to determine an appropriate award to Plaintiff of attorneys’ fees, costs and disbursements.

CONCLUSION

Accordingly, Plaintiff's Motion should be granted in its entirety, together with such other relief as this Court deems just and proper.

Dated: May 5, 2025

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CERTIFICATION PURSUANT TO 22 NYCRR § 202.8-b

I, Jesse B. Schneider, an attorney duly admitted to practice law before the courts of the State of New York, hereby certify that this Memorandum of Law complies with the word count limit set forth 22 NYCRR § 202.8-b, because it contains 2,164 words, excluding the parts exempted by § 202.8-b(b). In preparing this certification, I have relied on the word count of the word-processing system used to prepare this Memorandum.

Dated: May 5, 2025

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