



Sanchez v Frederic Fekkai (Mark NY) LLC

2022 NY Slip Op 32774(U) (2022) | Cited 0 times | New York Supreme Court | August 17, 2022

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20 were read on this motion to/for JUDGMENT - DEFAULT . In this action for unpaid wages under New York Labor Law, plaintiff Jaime Daniel

Sanchez moves, pursuant to CPLR 3215, for a default judgment against defendant Frederic Fekkai (Mark NY) LLC. The motion is supported by the summons and complaint, an affidavit submits an

affidavit from Kimberly Callet (Callet), its Vice President, Salons (NYSCEF Doc No. 19, Callet aff, ¶ 2). Defendant has also served an answer (NYSCEF Doc No. 17).

A motion proof of service of the

proof of the facts constituting the claim, [and] the default

3215 [f]; see also *Gordon Law Firm, P.C. v Premier DNA Corp.*, 205 AD3d 416, 416 [1st Dept

[A] complaint verified by someone or an affidavit executed by a party with personal

Beltre v Babu, 32

AD3d 722, 723 [1st Dept 2006]; *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]

he affidavit or verified complaint need only allege enough facts to enable a court

to determine that a viable cause of action exist] SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. WILLIAM PERRY PART 23 Justice



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-----X INDEX NO. 156622/2021
MOTION DATE 02/22/2022 MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION JAIME SANCHEZ Plaintiff, - v - FREDERIC FEKKAI (MARK NY) LLC, Defendant. -----X FILED:
NEW YORK COUNTY CLERK 08/17/2022 12:58 PM INDEX NO. 156622/2021 NYSCEF DOC. NO. 21 RECEIVED NYSCEF: 08/17/2022

1 of 7 [* 1] (Feffer v Malpeso, 210 AD2d 60, 61 [1st Dept 1994]). id.). A party in de admits all traversable allegations in the complaint, including the basic allegation of liability, but does not admit the plaintiffs conclusion as to damage Rokina Opt. Co. v Camera King, 63 NY2d 728, 730 [1984]).

The affidavit of service sworn to on August 2, 2021 shows that plaintiff served defendant with process on July 29, 2021 by personally delivering the summons and complaint and a notice of electronic filing to Mara Velasco, an agent authorized to accept service of process for (NYSCEF Doc No. 12, Spasojevich affirmation, Ex G). Plaintiff filed the affidavit of service on August 2, 2021 (NYSCEF Doc No. 3). Plaintiff has established that defendant has failed to timely answer or appear (see CPLR 320) and has not sought an extension of time to do so (see CPLR 3012).

at 25 East 77th Street, New York, New York 10075 on July 14, 2021 (NYSCEF Doc No. 5, Spasojevich affirmation, ¶ 28; NYSCEF Doc No. 13, Spasojevich affirmation, Ex H), although 311-a obviates the need for the additional mailing required under CPLR 3215 (g) (4). 1

1 Although CPLR 3215 (g) (4) does not expressly refer to limited liability companies, compliance with CPLR 3215 (g) (4) when seeking a default judgment against a limited liability company is required (see Wonder Works Constr. Corp. v RCDolner, LLC, 44 AD3d 526, 526 [1st Dept 2007]; Crespo v A.D.A. Mgt., 292 AD2d 5, 10 [1st Dept 2002]; cf. Jian Hua Tan v AB Capstone Dev., LLC, 163 AD3d 937, 939 [2d Dept 2018]). FILED: NEW YORK COUNTY CLERK 08/17/2022 12:58 PM INDEX NO.



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2 of 7 [* 2] Turning to the merits, plaintiff alleges that he is a manual laborer and that plaintiff failed to pay him on a weekly basis in violation of the New York Labor Law (NYSCEF Doc No, 11,

Spasojevich affirmation, manual worker

shall be paid weekly and not later than seven calendar days after the end of the week in which the wages are earned

stylist between January 1, 2017 to December 31, 2020 for which he was compensated on a bi-weekly basis (NYSCEF Doc No. 6, Lawrence Spasojevich [Spasojevich] affirmation, Ex A, ¶¶ 3 cleaning his station, sweeping, restocking and organizing shelves and breaking down boxes (id., ¶ 4). He states that he spent more than 25% of his time performing manual labor (id., ¶ 5).

Included in his affidavit is a table listing dates for each pay period beginning September 22, 2019 through December 26, 2020, the amounts plaintiff was paid each week, and the dates he was paid (id., ¶ 7). Plaintiff states that he was not paid his wages for the first week in that bi-weekly pay period within seven calendar days of the end of that first work week (id., ¶ 12). Instead, he regularly received his total pay for the bi-weekly period approximately six days after the end of that period (id., ¶ 6). Plaintiff states that, based on his recall and recollection, defendant employed this same payment practice in 2017 and 2018 (id., ¶¶ 16-21).

Plaintiff also tenders two advisory opinion letters issued by the New York State

Department of Labor (DOL) dated December 4, 2008 and December 9, 2009. The December 4,

meaning of the Labor Law because their job responsibili
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3 of 7 [* 3] own work stations, and cleaning wash sinks, equipment, and other shared work spaces in the pasojevich affirmation, Ex 15 at 1-2, quoting NY St Dept of

Labor Op No. RO-08-0061 [Dec. 4, 2008]). Such proof is sufficient to demonstrate the merits of his claim. Thus, plaintiff has demonstrated its entitlement to a default judgment.

To successfully oppose a motion for leave to enter a default judgment, a defendant must demonstrate a reasonable excuse for the default and a meritorious defense Morrison Cohen LLP v Fink, 81 AD3d 467, 468 [1st Dept 2011] mine

what constitutes a reasonable excuse (see Xiaoyong Zhang v Jong, 195 AD3d 435, 435 [1st Dept 2021]). Factors to consider include

the opposing party, whether there has been willfulness, and the strong public policy in favor of New Media Holding Co. LLC v Kagalovsky, 97 AD3d 463, 465

[1st Dept 2012] [internal quotation marks and citation omitted]). Moreover, courts have the inherent power to forgive even an unexplained default in the interest of justice id. [citation omitted]).

As a reasonable excuse, defendant asserts that it never received service of the summons corporate

offices and salons were closed due to the COVID-19 pandemic, with its corporate offices closed period (id., ¶ 4). She states that defendant never received the summons and complaint allegedly served on the Secretary of State or the summons purportedly mailed to 25 East 77th Street in New York (id., ¶¶ 5-6). She further states that defendant did not receive notice of the present

motion for a default until motion (id., ¶ 7). FILED: NEW YORK COUNTY CLERK 08/17/2022 12:58 PM INDEX NO. 156622/2021 NYSCEF DOC. NO. 21 RECEIVED NYSCEF: 08/17/2022



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4 of 7 [* 4] Generally, bare denial of receipt of the summons and complaint is not a reasonable excuse (see *Jansons Associated Inc. v 12 E. 72nd LLC*, 185 AD3d 499, 499 [1st Dept 2020]).

Here, defendant fails to address how it processed mail received at its corporate address or at the salon on East 77th Street or if the salon reopened prior to July 14, 2021, the date plaintiff

contends he mailed an additional copy of the summons. While

there is a strong preference in our law that matters be decided on their

merits (*Catarine v Beth Israel Med. Ctr.*, 290 AD2d 213, 215 [1st Dept 2002]). Crucially,

plaintiff has not alleged, nor has he demonstrated, that he suffered prejudice from the delay (see

Peg Bandwidth, LLC v Optical Communications, 150 AD3d 625, 626 [1st Dept 2017]),

especially since he waited several months after defendant failed to appear to move for a default

judgment (see *Sukhu v R.A.I.N. Home Attendant Servs., Inc.*, 190 AD3d 468, 468 [1st Dept

2021]). Additionally, the defendant served an answer shortly after plaintiff filed the motion.

Defendant has also presented a potentially meritorious defense. Labor Law § 190 (4)

def manual worker shall be paid weekly and not later than

seven calendar days after the end of the week in which the wages are earned -by-

longstanding interpretation of the term manual workers includes employees who spend

more than 25 percent of their working time performing physical labor

No. RO-09-

NYSCEF Doc No. 15 at 1-2). FILED: NEW YORK COUNTY CLERK 08/17/2022 12:58 PM INDEX
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5 of 7 [* 5] Furthermore, as stated above, defendant has served an answer to the complaint, and plaintiff, in reply answer.



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are better suited to a motion for an extension of time to answer brought under CPLR 3012 (d).

failure of plaintiff to demonstrate any prejudice attributable to the delay and the policy

preference in favor of resolving disputes on the merits New

Media Holding Co. LLC, 97 AD3d at 466 [internal quotation marks and citation omitted]; see

also B.U.D. Sheetmetal & Massachusetts Bay Ins. Co., 248 AD2d 856, 856 [3d Dept 1998]).

rence for a disposition on the merits, the court, sua sponte,

see Pena-Vazquez v Beharry, 82 AD3d

649, 649 [1st Dept 2011] [denying a motion for a default judgment and the court, on its own

motion, deem

Accordingly, it is

ORDERED that the motion of plaintiff Jaime Daniel Sanchez for a default judgment

against Frederic Fekkai (Mark NY) LLC (motion sequence no. 001) is denied; and it is further

ORDERED that the answer of defendant Frederic Fekkai (Mark NY) LLC filed on

February 15, 2022 (NYSCEF Doc No. 17) is deemed timely served nunc pro tunc; and it is

further FILED: NEW YORK COUNTY CLERK 08/17/2022 12:58 PM INDEX NO. 156622/2021
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6 of 7 [* 6] ORDERED that the parties are directed to meet and confer and electronically file a days.

8/17/2022 \$SIG\$ DATE WILLIAM PERRY, J.S.C. CHECK ONE: CASE DISPOSED X NON-FINAL
DISPOSITION GRANTED X DENIED GRANTED IN PART OTHER APPLICATION: SETTLE
ORDER SUBMIT ORDER CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN
FIDUCIARY APPOINTMENT REFERENCE FILED: NEW YORK COUNTY CLERK 08/17/2022
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