

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTYPRESENT: HON. JOEL M. COHEN

PART

IAS MOTION 3EFM

Justice

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INDEX NO. 652546/2017

EHL FUNDING LLC,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 002

- v -

WILLIAM MCFARLAND, JEFFREY ATKINS, ROBERT NEMETH

Defendants.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 36, 37, 38, 39, 40, 41, 42, 43, 44

were read on this motion for

DEFAULT JUDGMENT

Upon the foregoing documents:

Plaintiff EHL Funding LLC moves for a default judgment pursuant to CPLR § 3215 against Defendant William McFarland, for failure to appear, answer, or otherwise move with respect to the complaint. For the reasons described below, the motion for default judgment is granted.

Defendant has failed to appear, answer or otherwise move in this action. Nor did he submit opposition to the instant motion for a default judgment.

Plaintiff has submitted un rebutted evidence demonstrating compliance with the requirements of CPLR § 3215. Plaintiff demonstrated sufficient cause as to its delay in filing the instant motion in accordance with CPLR § 3215 (c). Specifically, Plaintiff explained that on June 27, 2018, it obtained an Order of relief from the automatic stay from U.S. Bankruptcy Court in the matter of *In re Fyre Festival LLC* Case No. 17-11883 pursuant to 11 U.S.C. § 362, allowing EHL to proceed against the defendants in this action. (NYSCEF 41). Defendant

Nemeth then made a motion in this case to stay the proceedings, which was denied on October 18, 2018. The instant motion was filed twelve days later. Defendant has demonstrated sufficient cause for its delay in seeking a default judgment in this action. Therefore, Plaintiff's motion for default judgment is granted as to liability.

Plaintiff's claims are for a sum certain of \$2,891,600.00, plus contractual interest upon default of 30%.

Plaintiff also seeks attorneys' fees. Claims for attorneys' fees "are not ordinarily amenable to characterization as claims for 'sums certain.'" *Arent Fox Kintner Plotkin & Kahn v. Lurzer GmbH*, 297 A.D.2d 590 (1st Dep't 2002); *Reynolds Secs. v. Underwriters Bank & Trust Co.*, 44 N.Y.2d 568 at 572 (1978) (holding that to be considered a "sum certain" there can be no dispute as to the amount due). Therefore, because attorneys' fees are not treated by courts as a sum certain, Plaintiff shall be directed to an Inquest to determine the issue of attorneys' fees.

Defendant may seek a vacatur of the instant default judgment if it can satisfy the requirements of CPLR § 5015, CPLR § 317, or any other relevant law.

Therefore it is:

ORDERED that Plaintiff's Motion for a Default Judgment against Defendant is Granted, and the Clerk of the Court is directed to enter a judgment in favor of Plaintiff and against Defendant for the amount alleged in the complaint, \$2,891,600.00, with interest at the contractual rate of 30% from April 21, 2017, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; it is further

ORDERED Plaintiff's request for attorneys' fees is referred to a JHO to hear and determine; and it is further

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to determine the attorneys' fees owed to Plaintiff; and it is further

ORDERED that the powers of the JHO/Special Referee to determine shall not be limited further than as set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119 M, 646-386-3028 or spref@courts.state.ny.us) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), 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 "Local Rules" link), shall assign this matter to an available Special Referee to determine as specified above; and it is further


ORDERED that plaintiff's counsel shall serve a copy of this order with notice of entry on defendant within five days and that counsel for plaintiff shall, after thirty days from service of those papers, submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (which can be accessed at <http://www.nycourts.gov/courts/1jd/supctmanh/refpart-infosheet-10-09.pdf>) 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 hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR § 4318) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and that the parties shall appear for the reference hearing, including with all such witnesses and evidence as they may seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be

authorized by the Special Referee's Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue specified above shall proceed from day to day until completion.

This constitutes the Decision and Order of the Court.

<u>2/7/2019</u>			
DATE		JOEL M. COHEN, J.S.C.	
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE
		<input type="checkbox"/> DENIED	