

**West Harlem Community Org., Inc. v West Harlem
Community Org. Local Dev. Corp.**

2019 NY Slip Op 30657(U)

March 14, 2019

Supreme Court, New York County

Docket Number: 651003/2015

Judge: Andrea Masley

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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. ANDREA MASLEY PART IAS MOTION 48EFM

Justice

-----X

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MOTION DATE 12/17/2018

MOTION SEQ. NO. 007

Plaintiff,

- v -

DECISION AND ORDER

WEST HARLEM COMMUNITY ORGANIZATION LOCAL
DEVELOPMENT CORPORATION, ANDRE SOLEIL, JOEDNEE
COPELAND, ALFRED WORLEY, MIAMI CAPITAL, LLC.,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 135, 136, 137, 138,
139, 140, 141, 142

were read on this motion to/for

JUDGMENT - DEFAULT

Upon the foregoing documents, it is ordered that plaintiffs' motion for a default judgment
against defendant Andre Soleil is granted in the absence of opposition.

On June 20, 2018, Soleil's answer was stricken for his repeated failure to provide
plaintiffs with certain discovery and his failure to comply with this court's January 19, 2018
order.

"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" (CPLR 3215[a]). On a motion for a default judgment,
the movant must submit proof of service of the pleadings, proof of the facts constituting the
claim, proof of the default, and amount due by affidavit made by the party (CPLR 3215 [f]).

"CPLR 3215 (f) requires that an applicant for a default judgment file proof by affidavit made by

the party of the facts constituting the claim” (*see Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70 [2003]). However, a verified pleading “may be submitted instead of the affidavit when it has been properly served” (*id.*).

Plaintiffs provide proof of service of the summons and second amended verified complaint. The second amended verified complaint asserts claims against Soleil for conversion, an accounting, a constructive trust, breach of fiduciary duty, professional malpractice (two causes of action), and in addition to monetary damages, seeks an injunction and declaratory judgment. Plaintiffs provide adequate proof of their claims for conversion, an accounting, a constructive trust, breach of fiduciary duty, professional malpractice (two causes of action), as well as for injunctive relief against Soleil by means of its complaint, verified by Jerome White, Chair of the Board of Directors of West Harlem Community Organization, Inc. (*see* CPLR 3215 [f]). Finally, plaintiffs provide their attorney’s affirmation, affirming that Soleil’s answer was stricken and that he has not complied with the previous court orders. Soleil has ~~not~~ also not made any attempt to seek relief regarding his answer or otherwise. He also did not oppose this motion. The court will conduct an inquest on the issue of damages.

Plaintiffs also seek a declaratory judgment. However, New York courts rarely grant declaratory judgments on default “with no inquiry as to the merits” (*Tanenbaum v Allstate Ins. Co.*, 66 AD2d 683, 684 [1st Dept 1978]). Declaratory judgments require that a “plaintiff establish a right to a declaration against a defendant and will not be granted on the default and pleadings alone” (*Levy v Blue Cross and Blue Shield of Greater New York*, 124 AD2d 900, 902 [3d Dept 1986]). Therefore, if plaintiffs wish to pursue this claim, a hearing is necessary.

Accordingly, it is

ORDERED that plaintiffs' motion for a default judgment against defendant Andre Soleil is granted as to their first, third, fourth, fifth, sixth, seventh, and eighth causes of action for and denied as to their second cause of action for a declaratory judgment; and it is further

ORDERED that this matter shall be set down for an inquest on damages and a hearing on defendant's claim for a declaratory judgment; and it is further

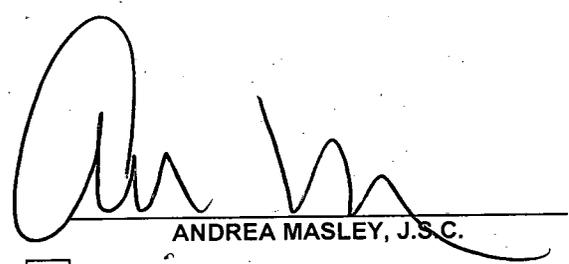
ORDERED that plaintiffs are directed to file a note of issue within 30 days of this order. A failure to file the note of issue will result in dismissal of this action against Andre Soleil; and it is further

ORDERED that plaintiffs are directed to contact the Part 48 Part Clerk (bhanson@nycourts.gov or 646-386-3265) within 5 days of filing the note of issue to schedule a hearing date; and it is further

ORDERED that defendant Andre Soleil is enjoined from seeking to dispose, exchange, transfer, or dissipate any assets or funds of the plaintiffs including the West Harlem Community Organization, Inc.'s properties as defined in the Second Amended Verified Complaint (WHCO Properties), or exercising any control over the plaintiffs including the WHCO Properties and compelling defendant Andre Soleil to turn over to plaintiffs access to all corporate books and records, financial records, and bank accounts of plaintiffs including the WHCO Properties; and it is further

ORDERED that plaintiffs are directed to personally serve a copy of this order with notice of entry by first class mail on defendant Andre Soleil, as well as e-file on NYSCEF with an affirmation of service.

3/14/19
DATE


ANDREA MASLEY, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED DENIED
- SETTLE ORDER
- INCLUDES TRANSFER/REASSIGN

- NON-FINAL DISPOSITION
- GRANTED IN PART OTHER
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: