

**OSK IX, LLC v Desir**

2024 NY Slip Op 32224(U)

July 1, 2024

Supreme Court, New York County

Docket Number: Index No. 651375/2020

Judge: Debra A. James

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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. DEBRA A. JAMES**

**PART 59**

*Justice*

-----X

OSK IX, LLC,

Plaintiff,

- v -

JACQUES DESIR,

Defendant.

-----X

**INDEX NO. 651375/2020**

**MOTION DATE 02/04/2021**

**MOTION SEQ. NO. 001**

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

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

Upon the foregoing documents, it is

ORDERED that the plaintiff's application for an order that deems the filing of the affidavit of service of the summons and complaint as timely, pursuant to CPLR §§ 2001 and 2004, is granted, without opposition; and it is further

ORDERED that that portion of the plaintiff's action that seeks the recovery of attorney's fees is severed and the issue of the amount of reasonable attorney's fees that plaintiff may recover from the defendant Jacques Desir is referred to a Special Referee to hear and report; and it is further

ORDERED that counsel for the plaintiff shall, within thirty (30) days from the date of this order, serve a copy of this order with notice of entry, together with a completed Information Sheet, upon the Special Referee Clerk in the General Clerk's Office, who

is directed to place this matter on the calendar of the Special Referee's Part for the earliest convenient date; and it is further

ORDERED that such service upon the Special Referee Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website); and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts; and it is further

ORDERED that plaintiff's motion for a default judgment against defendant on the first cause of action for breach of promissory note is granted, without opposition; and it is further

ORDERED that the Clerk of the Court is directed to enter judgement in favor of plaintiff and against defendant in the sum of \$311,030.91, plus interest in the amount of \$42,546.62 as of December 21, 2020, plus interest thereafter at rate of 3.750% per annum until the entry of judgment in the amount of \$ \_\_\_\_\_, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs.

DECISION

In this action seeking damages for breach of a promissory note, plaintiff OSK IX, LLC moves, pursuant to CPLR § 3215, for a default judgment for the relief demanded on the first cause of action of the complaint based on the failure of defendant Jacques Desir to answer or appear.

On this motion, plaintiff has complied with the strictures of CPLR 3215(f), having submitted proof of service of the summons and complaint and proof of service of this motion upon the defendant. Defendant has not opposed the application of plaintiff, pursuant to CPLR §§ 2001 and 2004, to deem the filing of the affidavit of service of the summons and complaint upon defendant as timely, nunc pro tunc. Defendant has defaulted in appearance on this motion. Plaintiff has further submitted an affidavit of a person with knowledge of the facts, as well as an affirmation as to defendant's default pursuant to CPLR § 3215 (f). This motion is brought within one year of the default.

Having established the statutory requisites for entry of a default judgment and as the breach of promissory note claim is for a sum certain, plaintiff is entitled to the judgment it seeks.

However, the issue of reasonable attorneys' fees that plaintiff seeks to recover from defendant must be determined at

an evidentiary hearing. See Matakov v Kel-Tech Construction Inc, 84 AD3d 677 (1<sup>st</sup> Dept 2011).

*Debra A. James*

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7/1/2024

DATE

DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE