

Fidelity Natl. Title Ins. Co. v Harlem 546-146 Assoc.

2024 NY Slip Op 33884(U)

October 28, 2024

Supreme Court, New York County

Docket Number: Index No. 151569/2023

Judge: Louis L. Nock

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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. LOUIS L. NOCK PART 38M

Justice

FIDELITY NATIONAL TITLE INSURANCE COMPANY,
Interpleader Plaintiff,

INDEX NO. 151569/2023
MOTION DATE 07/31/2024
MOTION SEQ. NO. 001

- v -

HARLEM 546-146 ASSOCIATES, LLC, HARLEM 550-146 ASSOCIATES, LLC, 113-117 REALTY, LLC

DECISION + ORDER ON MOTION

Interpleader Defendants.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

were read on this motion to/for DISCHARGE AND DEFAULT

LOUIS L. NOCK, J.S.C.

Upon the foregoing documents, it is ordered that the motion for interpleader relief and for entry of a default judgment is granted in part, in accordance with the following memorandum decision.

Background

This interpleader action arises out of unclaimed escrow funds associated with a real estate transaction between interpleader defendants Harlem 546-146 Associates, LLC ("Harlem 546") and Harlem 550-146 Associates, LLC ("Harlem 550") (collectively, the "Sellers") and interpleader defendant 113-117 Realty, LLC (the "Buyer"). Pursuant to an escrow agreement, dated April 24, 2012 (the "Escrow Agreement"), Harlem 546 deposited funds in the amount of \$20,000.00 with interpleader plaintiff to facilitate the sale of the property (NYSCEF Doc. No. 3). Under the terms of the Escrow Agreement, interpleader plaintiff agreed to hold the escrow funds until receipt of an authorization to release executed by the Sellers and Buyer (id.). To date,

interpleader plaintiff has not received authorization to release the escrow funds (NYSCEF Doc. No. 10 ¶ 6).

To avoid exposure to liability from potential conflicting claims among interpleader defendants to the unclaimed escrow funds, interpleader plaintiff commenced this action on February 16, 2023 (summons and complaint, NYSCEF Doc. No. 1, 2). Affidavits of service, regular on their face, attest to service on Harlem 546 and Harlem 550 by personal delivery to an agent authorized to receive process on June 14, 2023, pursuant to CPLR 311-A, and on 113-117 Realty, LLC by service on the Secretary of State on February 23, 2023, pursuant to Business Corporation Law § 306(b) (NYSCEF Doc. No. 14).

Interpleader plaintiff now makes this motion for default judgment pursuant to CPLR 3215 and for interpleader relief under CPLR 1006 (f), seeking its discharge from liability to the interpleader defendants, an order allowing it to deposit with the court the escrow funds, and an award of its reasonable attorneys' fees, costs, and disbursements associated with this action. Interpleader defendants' time to respond has expired, and none has appeared or answered the interpleader complaint. Moreover, the motion is unopposed.

Standard of Review

CPLR 1006 provides that “[a] stakeholder is a person who is or may be exposed to multiple liability as the result of adverse claims. A claimant is a person who has made or may be expected to make such a claim. A stakeholder may commence an action of interpleader against two or more claimants” (CPLR 1006 [a]). “After the time for all parties to plead has expired, the stakeholder may move for an order discharging him from liability in whole or in part to any party” (CPLR 1006 [f]). “The court may grant the motion and require payment into court,

delivery to a person designated by the court or retention to the credit of the action, of the subject matter of the action to be disposed of in accordance with further order or the judgment” (*id.*).

An interpleader action is “a safe and appropriate course” by which a stakeholder may seek to be discharged as escrowee when faced with competing claims to escrow funds (*Fischbein, Badillo, Wagner v Tova Realty, Co.*, 193 A.D.2d 442, 444 [1st Dept 1993]). A motion to interplead and to be discharged is properly granted where “[t]he plaintiff demonstrated that it was a neutral stakeholder with no interest in the disputed funds” (*Matthews, Kirst & Cooley, PLLC v Plaza Surf & Sports, Inc.*, 206 A.D.3d 716, 718 [2d Dept 2022] [citations omitted]; *see also Am. Int'l Life Assur. Co. of New York v Ansel*, 273 A.D.2d 421, 422 [2d Dept 2000] [awarding costs, disbursements, and a reasonable attorney’s fee, pursuant to CPLR 1006(f) where “[t]he plaintiff, a neutral stakeholder with no interest in the disputed matter, was forced to participate in a dispute between the two defendants”]).

A plaintiff that seeks entry of a default judgment for a defendant’s failure to answer must submit proof of service of the summons and complaint upon the defendant, proof of the facts constituting the claim, and proof of the defendant’s default (CPLR 3215[f]). “The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts” (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). “[D]efaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them” (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). Nevertheless, “CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action” (*Guzetti v City of New York*, 32 AD3d 234, 235 [1st Dept 2006] [internal quotations and citations omitted]).

Discussion

Here, plaintiff has met its burden on the motion for interpleader relief by demonstrating that it is a neutral stakeholder with no interest in the unclaimed escrow funds (NYSCEF Doc. No. 10, ¶ 6). Further, plaintiff's counsel has submitted an affirmation in support of legal fees, which sets forth what, based on this court's application of the applicable standards (*see, In re Freeman's Estate*, 34 NY2d 1 [1974]), constitutes reasonably incurred legal fees in this matter, amounting to attorney's fees in the amount of \$7,286.40, plus costs and disbursements in the amount of \$1,630.00, for a total of \$8,916.40 (NYSCEF Doc. No. 15 ¶ 6).

However, the motion for default judgment is denied. The proponent of a motion for default judgment must submit proof of the facts constituting the claim (CPLR 3215[f]), either by a verified complaint or an affidavit by the party (*Mullins v DiLorenzo*, 199 AD2d 218, 219-20 [1st Dept 1993]). Here, the complaint is unverified (NYSCEF Doc. No. 2) and the supporting affirmation is by plaintiff's counsel, rather than plaintiff (NYSCEF Doc. No. 10).

Furthermore, plaintiff fails to submit proof of additional notice under CPLR 3215(g)(4). CPLR 3215(g)(4) provides that where, as here, a default judgment is sought for nonappearance of a corporate defendant that has been served pursuant to Business Corporation Law § 306(b), "an affidavit shall be submitted that an additional service of the summons by first class mail has been made upon the defendant corporation at its last known address at least twenty days before the entry of judgment" (CPLR 3215[g][4][i]). This provision applies equally where the defendant is a limited liability corporation (*Crespo v A.D.A. Mgt.*, 292 AD2d 5, 10 [1st Dept 2002]). A plaintiff's failure to comply with the statutory requirements and submit proof of such compliance with its motion warrants denial of the motion (*Schilling v Maren Enters*, 302 AD2d 375, 376 [2d Dept 2003]). Here, an affidavit of service attests to service on interpleader defendant 113-117

Realty, LLC via the Secretary of State (NYSCEF Doc. No. 14 at 4), but plaintiff did not submit any proof that it complied with the additional requirement under CPLR 3215(g)(4).

Accordingly, it is

ORDERED that the motion for entry of a default judgment is denied; and it is further

ORDERED that the motion for interpleader relief is granted; and accordingly, it is further

ORDERED that, within 30 days after the date of the filing hereof, interpleader plaintiff Fidelity National Title Insurance Company shall distribute to the New York County Clerk a check in the amount of \$11,083.60 (the "Interpleader Funds"), which is derived from the present amount of escrowed funds (\$20,000.00 as of June 27, 2024) less its reasonable fees, costs, and disbursements (\$8,916.40); and it is further

ORDERED that, upon payment of the Interpleader Funds into this court pursuant to this order, interpleader plaintiff Fidelity National Title Insurance Company shall be discharged from liability in whole to any party in the above-entitled action by reason of any matter or thing set forth in the pleadings herein; and it is further

ORDERED that the Clerk of the Court accept and deposit the Interpleader Funds into an account pending further direction from the court.

This constitutes the decision and order of the court.

ENTER:

Louis L. Nock

LOUIS L. NOCK, J.S.C.

10/28/2024
DATE

CHECK ONE:

CASE DISPOSED
 GRANTED

DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE