

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY  
PRESENT: Hon. EILEEN A. RAKOWER PART 15

Justice

EMPIRE LLC,  
Plaintiff,  
- v -  
LUIS D. MONTES,  
Defendant.

INDEX NO. 654241/2013  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 1  
MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion for/to

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...  
Answer — Affidavits — Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_  
Cross-Motion: Yes X No

PAPERS NUMBERED  
1-3  
\_\_\_\_\_  
\_\_\_\_\_

Plaintiff, Empire LLC (“Empire”), as landlord, commenced this action against defendant, Luis D. Montes (“Montes”), as tenant, seeking unpaid rent and additional rent for the commercial spaces known as booths 14, 15, and 17 of the building located at 37 West 47<sup>th</sup> Street, New York, New York (the “Subject Premises”).

On September 1, 2012, Empire and Montes entered into a lease agreement (“the Lease”) for the Subject Premises. The Lease commenced on September 1, 2012 and expired on August 31, 2014. Pursuant to the Lease, Montes agreed to pay base rent in equal monthly installments of \$4,500. Montes signed the Lease in his own personal capacity. Pursuant to the Lease, all payments due under the Lease other than fixed rent are additional rent, and Tenant is responsible for legal fees incurred by Plaintiff “on connection with any default by tenant ... including, but not limited to reasonable attorneys’ fees, in instituting, prosecuting or defendant any action ...”. On or about August 20, 2013, Montes vacated the Subject Premises mid-lease which violated the terms of the Lease. Empire states that it has yet to re-rent the Subject Premises, and Montes owes Empire monetary damages in the amount equal to the rent and additional rent which would have become due and owing for the post vacatur period of September 2013 through December 2013 and for rent through the expiration of the Lease on August 31, 2014.

Empire now moves for an Order pursuant to CPLR §3215 for a default judgment against Montes based on Montes’ failure to answer or otherwise appear and seeks to recover (1) post-vacatur rent from September 2013 to December 2013, monthly late fees, and interest on the post vacatur period totaling

\$20,824.38; (2) attorneys' fees pursuant to the terms of the lease; and (3) rent through the expiration of the Lease on August 31, 2014, totaling \$58,783.78. Empire submits the affidavit of Alan Abramson, a member of Empire, who avers to Montes' breach of the Lease and the amount owing by Montes to Empire. Empire also submits the attorney affirmation of Darren R. Marks, which annexes a copy of the Summons and Verified Complaint, proof of service upon Montes on March 21, 2014 pursuant to CPLR 308(2), and proof of additional mailing upon Montes on March 20, 2014. Montes has not answered or otherwise responded to the complaint, or appeared in opposition to this motion.

Based upon the foregoing, it is hereby

ORDERED that Plaintiff's motion for default judgment is granted without opposition; and it is further

ORDERED that the Clerk enter judgment in favor of Plaintiff, Empire LLC, and against defendant, Luis D. Montes, in the amount of \$79,608.16, together with interest as prayed for allowable by law (at the rate of 9% per annum from March 21, 2014) until the date of entry of judgment, as calculated by the Clerk, and thereafter at the statutory rate, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the amount of reasonable attorneys' fees and costs is referred to a Special Referee to hear and report with recommendations; and it is further

ORDERED that a copy of this order with notice of entry shall be served on the Clerk of the Reference Part (Room 119A) to arrange for a date for the reference to a Special Referee and the Clerk shall notify all parties, including defendants, of the date of the hearing.

This constitutes the Decision and Order of the Court. All other requested relief is denied.

Dated: OCTOBER 23, 2014

  
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HON. EILEEN A. RASKOWER

Check one:  FINAL DISPOSITION     NON-FINAL DISPOSITION