

SHORT FORM ORDER

**SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU - PART 15**

**Present: HON. WILLIAM R. LaMARCA
Justice**

MARIA IANNUCCI,

Plaintiff,

-against-

**NINO V. TERRANOVA, TERRANOVA & SONS,
INC. and UNITED PROPERTIES CORP.,**

Defendants.

**Motion Sequence #1
Submitted March 4, 2009**

INDEX NO: 13788/08

The following papers were read on this motion:

Notice of Motion.....1
TERRANOVA Affidavit in Opposition.....2
Affirmation in Opposition to Response.....3
Stipulation of Discontinuance as to UNITED PROPERTIES...4

Plaintiff, MARIA IANNUCCI, moves for an order, pursuant to CPLR § 3215, directing a default judgment in favor of the plaintiff and against the defendants, NINO V. TERRANOVA, TERRANOVA & SONS, INC. and UNITED PROPERTIES CORP., for the relief demanded in the complaint, based upon their failure to appear, answer or raise an objection to the summons and complaint within the time prescribed by law. Initially, the Court notes that, by Stipulation dated March 3, 2009, the action has been discontinued without prejudice against the defendant, UNITED PROPERTIES CORP., and the caption

shall be amended accordingly. Affidavits of Service reflect that defendant, TERRANOVA & SONS, INC. , was served with the summons and complaint on September 4, 2008, by service upon the Secretary of State pursuant to Business Corporation Law §306, and that defendant, NINO V. TERRANOVA was served with the summons and complaint on October 3, 2008, by service upon a person of suitable age and discretion at defendant's place of business.

In her affidavit, plaintiff relates that, in April 2005 she entered into an agreement with the corporate defendant in which she agreed to sell it all assets of Westbury Bagel Lady, including bakery equipment located at the premises known as 829 B/C Carman Avenue, Westbury, New York. Plaintiff states that the agreed price was \$93,000.00, and TERRANOVA & SONS, INC. paid her a down payment of \$10,000.00 and \$30,000.00 at the closing. She also claims that the remaining balance was secured by a Promissory Note, executed by TERRANOVA & SONS, INC. and delivered to the plaintiff, in the amount of \$53,000.00, with an interest rate of 7% for a term of five (5) years from July 1, 2005 to June 1, 2010. A copy of the Note has not been provided to the Court. Plaintiff states that a UCC filing was made but no copy of the UCC form is provided to the Court.

Plaintiff contends that, under the terms of the Note, TERRANOVA & SONS, INC. was required to make monthly payments of \$1,059.36 and that it defaulted in its payments on January 1, 2007 and thereafter ceased operating the business at the Carman Avenue location. It is plaintiff's position that, although the Note was not personally secured by defendant, NINO V. TERRANOVA, he fraudulently and knowingly liquidated several of the secured assets upon the corporation going out of business. Indeed, plaintiff believes that, when TERRANOVA & SONS, INC. moved its business, the defendant landlord, UNITED

PROPERTIES CORP., transferred the remaining bakery assets and equipment to new tenants in disregard of plaintiff's position as the first lien holder on the bakery equipment located at the premises. Plaintiff states that she has made numerous overtures to defendants in an attempt to rectify the situation but all defendants have refused to communicate with her and, by October 8, 2008, all defendants were served with the summons and complaint. She asserts that no legal answer has been received and no appearance has been filed to date, and that a default judgment should be granted to plaintiff in the sum of \$39,360.79, together with interest and legal fees.

In opposition to the motion, *pro se* defendant, NINO V. TERRANOVA, submits an affidavit in opposition in which he states that he did not sell any equipment; that the business failed and he closed the doors and left everything on the premises. He states that the landlord, UNITED PROPERTIES CORP., took possession of everything in the bakery and that he has no knowledge of what the landlord did with the property left in the bakery. While counsel for plaintiff contends that the opposition papers do not make defendant's failure to appear excusable or warranted and that he has not demonstrated a meritorious defense, neither has the plaintiff provided the Court with sufficient evidence to grant a default judgment against defendant, NINO V. TERRANOVA, who plaintiff acknowledges has not guaranteed payment on the corporations's debt. Nor has plaintiff provided proof of the additional notice required prior to entry of a default judgment, against the corporation, pursuant to CPLR §3215(g)(4). Based on the foregoing, it is hereby

ORDERED, that plaintiff's motion for a default judgment is denied for failure of proof, with leave to renew upon submission of proper papers. Notwithstanding defendants

failure to appear, plaintiff must establish *prima facie* proof of its claim with sufficient factual assertions. CPLR §3215(f). Default judgments are not to be rubber stamped once defendants failure to appear has been shown. CPLR §3215 requires some proof of liability to satisfy the Court as to the validity of the claim. See, *Joosten v Gale*, 129 AD2d 531, 514 NYS2d 729 (1st Dept. 1987); and it is further

ORDERED, that the caption shall henceforth read as follows:

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

MARIA IANNUCCI,

Plaintiff,

-against-

INDEX NO: 13788/08

**NINO V. TERRANOVA and TERRANOVA &
SONS, INC.,**

Defendants.

All further requested relief not specifically granted is denied.

This constitutes the decision and order of the Court.

Dated: June 11, 2009



WILLIAM R. LaMARCA, J.S.C.

ENTERED

JUN 17 2009

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**

TO: Mark A. Ziropiannis, Esq.
Attorney for Plaintiff
1065 Old Country Road, Suite 204
Westbury, NY 11804

Nino V. Terranova
Defendant Pro Se
7 Regal Lane
Levittown, NY 11756

iannucci-terranova.#1/defaultjudg