

**SHORT FORM ORDER
SUPREME COURT-NEW YORK STATE-NASSAU COUNTY
PRESENT:**

**HON. ANTHONY L. PARGA
JUSTICE**

-----X PART 8

ALL POINTS CAPITAL CORP. transacting
business under the trade name CAPITAL ONE
EQUIPMENT LEASE AND FINANCE,
formerly NORTH FORK EQUIPMENT LEASING,

Plaintiff,

-against-

FREDERIC J. VAGNINI, individually and d/b/a
FREDERIC J. VAGNINI, M.D.,

Defendant(s).

INDEX NO. 7473/11
XXX
MOTION DATE: 8/29/11
SEQUENCE NO. 001

-----X
Notice of Motion, Affs. & Exs..... 1

Plaintiff's motion for an order for granting a default judgment against defendant, Frederic J. Vagnini, M.D. individually and d/b/a Frederic J. Vagnini, M.D., on its first, fourth, and fifth causes of action, pursuant to CPLR §3215, is granted without opposition. Plaintiff's application for default judgment on its third cause of action for a judgment of possession for the equipment at issue is denied without prejudice, as plaintiff has not complied with the requirements of CPLR §7102.

The following facts are taken from pleadings and submitted papers and do not constitute findings of fact by this Court.

This action was brought by plaintiff to enforce a finance lease of certain medical equipment executed by Frederic J. Vagnini, M.D. and personally guaranteed by Frederic J. Vagnini. Plaintiff alleges that defendant failed to make installment payments in accordance with the terms of certain leases. As a result, under the terms of the lease, plaintiff accelerated the balances due under the lease and demanded possession of the equipment.

In support of its application, movant submits a Summons and Complaint, along with an Affidavit of Service documenting timely service upon defendant on June 1, 2010. An additional copy of the summons and complaint was duly mailed to defendant, pursuant to CPLR 3215(g)(3),

on June 13, 2011. Movant also submits an affidavit stating that defendant Frederic J. Vagnini is not in any branch of the military service. Additionally, movant further submits an affidavit, duly executed by Senior Vice President of plaintiff, Catherine M. Wilinski, setting forth the merits of this action and the defendant's default under the terms of the lease. To date, defendant Frederic J. Vagnini, M.D., individually and d/b/a Frederic J. Vagnini, M.D., has failed to answer or otherwise appear in this action.

Within her affidavit, with respect to plaintiff's first cause of action, Catherine M. Wilinski attests that the defendant is in default of Lease 104221 Schedule 3 Account #3003-00961 in the amount of \$13,844.79 plus interest from July 26, 2011 at the rate of 18% per annum or per diem of \$6.92, exclusive of fees. She also attests that defendant is in default of Lease 104221 Schedule 4 Account #3003-00995 in the amount of \$13,935.11 plus interest from July 26, 2011 at the rate of 18% per annum or per diem rate of \$6.97, exclusive of fees. She further attests that the defendant is in default of Lease 104221 Schedule 5 Account #3003-01038 in the amount of \$3,108.16 plus from July 26, 2011 at the rate of 18% per annum or per diem rate of \$1.55, exclusive of fees. Accordingly, Ms. Wilinski attests that there is \$30,888.06 due and owing from the defendant to the plaintiff, plus interest from July 26, 2011 at a rate of 18% per annum.

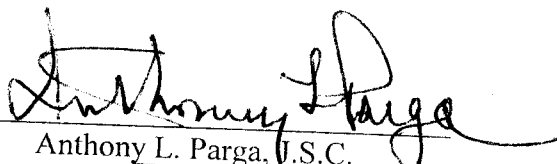
Ms. Wilinski attests that plaintiff is waiving its second cause of action. With respect to plaintiff's fourth cause of action for attorneys fees, the lease agreement provides that defendant shall be liable for reasonable attorneys fees and expenses incurred as a result of default. As such, plaintiff is awarded its actual attorneys fees only, in the amount of \$3,380.00, as demonstrated by the submission of plaintiff's counsel's bill and affirmation.

Lastly, with respect to plaintiff's fifth cause of action, plaintiff has demonstrated that Frederic J. Vagnini unconditionally guaranteed the obligations of Frederic J. Vagnini, M.D. under the lease agreements by guarantee dated May 11, 2004.

Accordingly plaintiff's motion for default judgment upon its first, fourth, and fifth causes of action is granted without opposition.

Submit judgment on notice in the amount of \$30,888.06, plus interest from July 26, 2011, and attorneys fees of \$3,380.00.

Dated: October 19, 2011


Anthony L. Parga, J.S.C.

ENTERED
OCT 21 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE

Cc: Helfand & Helfand
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