

**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK**

**Present:**

**HON. F. DANA WINSLOW,**

**Justice**

**TRIAL/IAS, PART 5**

**NASSAU COUNTY**

**LEASE-IT CAPITAL CORP., T/A ACCULEASE,**

**Plaintiff,**

**INDEX NO.: 5533/2009**

**-against-**

**MOTION DATE: 11/15/09**

**MILLENIUM HEALTH CARE MANAGEMENT  
OF FLUSHING, LLC, MILLENIUM HOMES, LLC,  
DANNY VASWANI, JETHMAL D. VASWANI,  
JOHN VASWANI,**

**AMENDED ORDER**

**MOTION SEQ. NO.: 001**

**Defendants.**

**The following papers read on this motion (numbered 1-2):**

**Notice of Motion.....1  
Affirmation in Partial Opposition (Jethmal D. Vaswani).....2**

The Court automatically adjourns all motions that are submitted, without opposition for one month, to determine whether or not there was either an administrative delay or excusable neglect. Such adjournment is made without prejudice to the moving party to have the merits of such an adjournment considered in the event that there is a subsequent submission.

This action arises out of an equipment lease (the "Lease") entered into between plaintiff, AccuLease, as lessor and defendant Millenium Health Care Management of Flushing, LLC ("Millenium Health") as lessee, on October 1, 2007. By its terms, the Lease provided that performance thereunder by Millenium Health is guaranteed by defendant Danny Vaswani ("D. Vaswani"). On October 1, 2007, a Corporate Guarantee guaranteeing performance of the Lease was executed by defendant Millennium Homes, LLC. The Lease provides for monthly payments in the amount of \$4,901.34 for a term of forty-eight months. Plaintiff alleges that in or about April 2008 and each month thereafter, Millenium Health defaulted on its obligations under the Lease, and that, as a result of such breach, defendants are liable to plaintiff for \$219,776.18 plus interest, costs

and attorneys' fees. Plaintiff now moves for a default judgment against defendants Millenium Health, Millenium Homes and D. Vaswani only pursuant to **CPLR §3215** based upon those defendants' failure to answer or appear. Defendant Jethmal Vaswani has submitted an affirmation in opposition, attaching an answer filed with the County Clerk on June 16, 2009, to clarify that plaintiff is not seeking a default judgment against him (despite an erroneous statement to the contrary in an affidavit of plaintiff's president).

In support of its motion, plaintiff has presented *inter alia* (i) the summons and verified complaint, verified by plaintiff's attorney; (ii) an affidavit of Fred Ferrara, President of plaintiff, sworn to on July 23, 2009 (the "Ferrara Affidavit"), setting forth the facts constituting the claim that an amount of \$219,776.18 plus interest, late charges, attorneys' fees and costs is due from defendants from July 23, 2009; (iv) the Lease Agreement, dated October 1, 2007, including the guarantee signed by D. Vaswani and Schedule of Equipment; (v) Equipment Acceptance Notice, dated October 1, 2007, executed by D. Vaswani acknowledging delivery and receipt of the equipment under the Lease; and (vi) a Corporate Guarantee of Millenium Homes guaranteeing the obligations of Millenium Health under the Lease.

Plaintiff also presents (i) an affidavit of service, sworn to on April 7, 2009, attesting to service on that date of the summons and verified complaint upon defendant Millenium Health by service on the Secretary of State pursuant to **Limited Liability Company Law ("LLCL") §303**; (ii) affidavit of service, sworn to on April 7, 2009, attesting to service upon Millenium Homes on that date by service on the Secretary of State pursuant to **BCL §306**. (The Court notes that as Millenium Homes is purportedly an LLC, the service would have properly been made upon the Secretary of State pursuant to **LLCL §303**.); (iii) affidavit of service, sworn to on April 27, 2009, attesting to service on defendant D. Vaswani by service on "Demetris Vaswani, relative", pursuant to **CPLR §308(2)** followed by a subsequent mailing by first class mail. Demetris Vaswani is described as a brown skinned, 18 year-old male with black hair, approximately 5'7" tall and weighing 150 lbs. According to said affidavit of service, "Demetris Vaswani" confirmed that the address was the defendant D. Vaswani's dwelling place and that said defendant was not in the military service. The delivery to "Demetris Vaswani" was followed by a mailing within twenty days to D. Vaswani's last known address (which was the same address used for **CPLR §308(2)** delivery); (iv) affidavit of additional mailing demonstrating compliance with **CPLR §3215(g)(3)**; (v) an affidavit of plaintiff's counsel, Frank Peretore, Esq. as to defendants' failure to answer or appear; and (vi) billing record of plaintiff's counsel.

With respect to defendants Millenium Health, Millenium Homes and D. Vaswani, the process server's affidavits constitutes *prima facie* evidence of proper service upon defendants pursuant to **LLC §303** and **CPLR §308(2)**. See generally **Lattingtown Harbor Property Owners Ass'n, Inc.**, 34 AD3d 536; **Lynch v. New York City Transit Authority**, 12 AD3d 644; **Bankers Trust Company of California, N.A. v. Tsoukas**, 303 AD2d 343. With respect to the merits of plaintiff's claim, the un rebutted allegations in the complaint and Ferrara Affidavit establish, *prima facie*, plaintiff's entitlement to the relief sought (see **CPLR §3215(f)**), which is sufficient to grant this unopposed motion for a default judgment against defendants Millenium Health, Millenium Homes and D. Vaswani only.

On the basis of the foregoing, it is

ORDERED, that plaintiff's motion for a default judgment pursuant to **CPLR §3215** against Millenium Health, Millenium Homes and D. Vaswani, only, is **granted**.

Submit judgment on notice, together with an updated affidavit in support thereof.

This constitutes the Order of the Court. Plaintiff shall serve a copy of this Order with Notice of Entry upon defendants Millenium Health and Millenium Homes pursuant to **CPLR §311-a** and upon defendant D. Vaswani pursuant to **CPLR §308(1) or (2)**, forthwith upon receipt from any source.

This constitutes the Order of the Court.

Dated: March 18, 2010



J.S.C.