

**Guaman v USM Asset Trust-Series 7**

2024 NY Slip Op 32248(U)

July 2, 2024

Supreme Court, New York County

Docket Number: Index No. 155977/2022

Judge: Judy H. Kim

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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. JUDY H. KIM**

**PART 04**

*Justice*

-----X

LUIS GUAMAN,

Plaintiff,

- v -

USM ASSET TRUST-SERIES 7, PENRITH URF  
LLC, DIXON ADVISORY USA INC., DIXON PROJECTS  
LLC, VICTORIO'S CONTRACTING, INC.,

Defendants.

-----X

DIXON ADVISORY USA INC., DIXON PROJECTS LLC,

Third-Party Plaintiffs,

-against-

EMPIREHD INC.,

Third-Party Defendant.

-----X

USM ASSET TRUST-SERIES 7, PENRITH URF LLC,

Second Third-Party Plaintiff,

-against-

EMPIREHD INC.,

Second Third-Party Defendant.

-----X

DIXON ADVISORY USA INC., DIXON PROJECTS LLC,

Third Third-Party Plaintiff,

-against-

VICTORIO'S CONTRACTING, INC.,

Third Third-Party Defendant.

**INDEX NO. 155977/2022**

**MOTION DATE 08/24/2023**

**MOTION SEQ. NO. 002**

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595829/2022

Second Third-Party  
Index No. 595342/2023

Third Third-Party  
Index No. 595424/2023

-----X  
EMPIREHD INC.,

Fourth Third-Party Plaintiff,

Fourth Third-Party  
Index No. 595832/2023

-against-

VICTORIO'S CONTRACTING, INC.,

Fourth Third-Party Defendant.  
-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 50, 51, 52, 53, 54, 55

were read on this motion for JUDGMENT - DEFAULT.

Upon the foregoing documents, Dixon Advisory USA Inc. and Dixon Projects LLC’s motion for a default judgment on its third third-party complaint is denied without prejudice.

Plaintiff commenced this action on July 19, 2022, asserting claims for negligence and violations of Labor Law §§240(1) and 241(6) against, inter alia, Dixon Advisory USA Inc. and Dixon Projects LLC (collectively, “Dixon”). On May 10, 2023, Dixon filed a third third-party complaint against Victorio's Contracting, Inc. (“Victorio’s”) asserting claims for contractual and common law indemnification and contribution (NYSCEF Doc. No. 34).

Dixon now moves for a default judgment on its third third-party complaint, submitting that complaint, affidavits of service establishing service of the third third-party complaint on Victorio’s via the New York State Secretary of State on May 19, 2023 and follow-up mailings on May 31, 2023 and August 16, 2023 (NYSCEF Doc. Nos. 54-55), and the affirmation of their counsel, Laura R. Efrati, Esq. attesting to Victorio’s default in answering (NYSCEF Doc. No. 51 [Efrati Affirm. at ¶8]).

## DISCUSSION

In order to establish their entitlement to a default judgment pursuant to CPLR 3215, movants must submit proof of: (1) service of the summons and complaint; (2) the facts constituting the claim; and (3) defendant's default in answering or appearing (See Gordon Law Firm, P.C. v Premier DNA Corp., 205 AD3d 416, 416 [1st Dept 2022]). However, "CPLR 3215 does not contemplate that default judgments are to be rubberstamped once jurisdiction and a failure to appear has 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" (Feffer v Malpeso, 210 AD2d 60, [1st Dept 1994]). "The standard of proof is not stringent, amounting only to some **\*\*3** firsthand confirmation of the facts" (Id.). An affidavit of merit setting forth only vague and conclusory assertions is insufficient to satisfy this standard (See Peacock v Kalikow, 239 AD2d 188, 190 [1st Dept 1997]).

While Dixon has established that Victorio's was duly served with the third third-party complaint and failed to answer, it has failed to provide proof of the facts constituting its claims. The third-party summons and complaint submitted by Dixon is not verified and is therefore "utterly devoid of evidentiary value, and thus insufficient to support entry of a judgment pursuant to CPLR 3215" (Beltre v Babu, 32 AD3d 722, 723 [1st Dept 2006] [internal citations omitted]). Neither does the affirmation of Dixon's counsel have any probative value. As such, the motion must be denied (See e.g., 49 Ramos v 49-51 Chambers LLC, 2022 NY Slip Op 32858[U], 5 [Sup Ct, NY County 2022]; Parenta v Doshi Diagnostic Imaging Services, P.C., 50 Misc 3d 1220(A) [Sup Ct, Kings County 2016]).

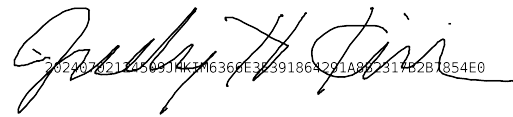
Accordingly, it is hereby

**ORDERED** that the motion is denied, without prejudice to renewal upon proper papers; and it is further

**ORDERED** that Dixon Advisory USA Inc. and Dixon Projects LLC shall, within twenty days of the date of this decision and order, serve a copy of this decision and order, with notice of entry, upon Victorio's Contracting, Inc. by first class mail and upon all other parties via NYSCEF; and it is further

**ORDERED** that the parties are to appear for a preliminary conference in Part 4 (80 Centre Street, room 308) on August 16, 2024 at 10:00 am.

This constitutes the decision and order of the Court.



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7/2/2024  
DATE

\_\_\_\_\_  
HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE