

People v Husky Lisa LLC

2024 NY Slip Op 33888(U)

October 28, 2024

Supreme Court, New York County

Docket Number: Index No. 451121/2024

Judge: Louis L. Nock

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LOUIS L. NOCK **PART** **38M**

Justice

-----X
PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK
Plaintiff,
INDEX NO. 451121/2024
MOTION DATE 05/02/2024, 07/16/2024
MOTION SEQ. NO. 001 002

- v -

HUSKY LISA LLC,

Defendant.

**DECISION + ORDER ON
MOTION**

-----X
The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 18 were read on this motion to/for DISSOLUTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 13, 14, 15, 16, 17 were read on this motion to/for DEFAULT JUDGMENT

LOUIS L. NOCK, J.S.C.

Upon the foregoing documents, it is ordered that the petition pursuant to Executive Law § 63(12) (Mot. Seq. No. 001) and the motion for default judgment (Mot. Seq. No. 002) by petitioner, which are consolidated herein for disposition, are granted, on default and without opposition, in accordance with the following memorandum decision.

Background

Petitioner, People of the State of New York, brings this special proceeding pursuant to New York State Executive Law § 63(12) against respondent Husky Lisa LLC (verified petition, NYSCEF Doc. No. 1). Petitioner alleges that respondent engaged in fraud by filing with the Department of State a fraudulent articles of organization (articles of organization, NYSCEF Doc. No. 2). The filing allegedly misrepresents the address at which respondent may receive service of process from the Secretary of State as well as the name and signature of the organizer, Lisa

Paoluccio (NYSCEF Doc. No. 1 ¶ 4). An affidavit by Lisa Paoluccio attests that respondent is a fake business that fraudulently registered the company in her name and address (affidavit and consumer complaint, NYSCEF Doc. No. 3). Petitioner alleges that respondent repeatedly and persistently engaged in fraud by filing and relying on the fraudulent articles of organization, causing harm to the individuals whose address respondent wrongly adopted, the Department of State, and any person or entity that relies on the false filing (NYSCEF Doc. No. 1 ¶¶ 7, 10). By notice of petition and verified petition (Mot. Seq. No. 001), plaintiff seeks injunctive relief enjoining respondent from continuing any fraudulent or illegal acts and an order dissolving respondent. The motion for default judgment (Mot. Seq. No. 002) likewise seeks dissolution.

Petitioner commenced this action on April 11, 2024 (NYSCEF Doc. No. 1). An affidavit of service, regular on its face, attests to service of the verified petition on respondent by service on the Secretary of State on April 17, 2024 (NYSCEF Doc. No. 9). Respondent's time to respond has expired, and it has neither appeared nor answered the verified petition. Moreover, there is no opposition to the motion.

Standard of Review

A plaintiff that seeks entry of a default judgment for a defendant's failure to answer must submit proof of service of the summons and complaint upon the defendant, proof of the facts constituting the claim, and proof of the defendant's default (CPLR 3215[f]). "The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts" (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). "[D]efaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them" (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). Nevertheless, "CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure

to appear have 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” (*Guzetti v City of New York*, 32 AD3d 234, 235 [1st Dept 2006] [internal quotations and citations omitted]).

“Executive Law § 63(12) authorizes the Attorney General to seek an injunction whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business” (*Fulton Commons Care Ctr., Inc. v James*, 227 A.D.3d 717, 718 [2d Dept 2024] [internal quotations and citations omitted]). Executive Law § 63(12) states, in pertinent part, as follows:

“Whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York, on notice of five days, for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, directing restitution and damages and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of section four hundred forty of the former penal law or section one hundred thirty of the general business law, and the court may award the relief applied for or so much thereof as it may deem proper.”

The word “fraud” is defined to include “any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions” (Exec. Law § 63[12]). “Under Executive Law § 63 (12), the test for fraud is whether the targeted act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud” (*People by James v N. Leasing Sys., Inc.*, 193 A.D.3d 67, 75 [1st Dept 2021] [internal quotations and citations omitted]).

Discussion

Plaintiff has satisfied its burden on the motion by submission of the affidavit of service on respondent (NYSCEF Doc. No. 9), the affirmation of plaintiff’s counsel, Assistant Attorney

General Laura C. Dismore, Esq., attesting to respondent's default (NYSCEF Doc. No. 14 ¶ 7), and the affidavit of Lisa Paoluccio, attesting to respondent's fraudulent acts in violation of Executive Law 63(12) alleged in the verified petition (NYSCEF Doc. No. 3). Respondent has never appeared in the action, nor did it submit any opposition to either petition or motion. Petitioner is therefore entitled to entry of a default judgment against respondent and to a judgment on the petition as follows.

Accordingly, it is

ORDERED that the petition (Mot. Seq. 001) is granted; and it is further

ORDERED that the motion for entry of a default judgment (Mot. Seq. 002) in favor of petitioner, People of the State of New York, by Letitia James, Attorney General of the State of New York, and against respondent Husky Lisa LLC is granted as to respondent's liability; and it is further

ORDERED that respondent Husky Lisa LLC is permanently enjoined from continuing any fraudulent or illegal acts in violation of Executive Law 63(12); and it is further

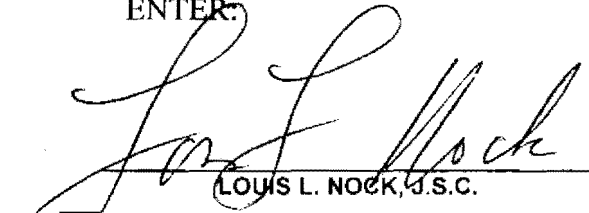
ORDERED that, pursuant to Executive Law 63(12), respondent Husky Lisa LLC shall be dissolved forthwith because of persistent fraud in the carrying on of its business, specifically by filing fraudulent articles of organization with the Department of State; and it is further

ORDERED that the Clerk of the Court shall provide a certified copy of this Order and Judgment to the Attorney General of the State of New York; and it is further

ORDERED that the Attorney General of the State of New York shall transmit a certified copy of this Order and Judgment to the Department of State, which, by filing a copy of the same, shall dissolve Husky Lisa LLC.

This constitutes the decision and order of the court.

ENTER:


LOUIS L. NOCK, J.S.C.

10/28/2024
DATE

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE