

Porsche Cars N. Am., Inc. v JRM Constr. Mgt., LLC

2024 NY Slip Op 34059(U)

November 14, 2024

Supreme Court, New York County

Docket Number: Index No. 656626/2020

Judge: Emily Morales-Minerva

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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. EMILY MORALES-MINERVA PART 42M

Justice

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PORSCHE CARS NORTH AMERICA, INC.,

Plaintiff,

- v -

JRM CONSTRUCTION MANAGEMENT, LLC, and SSM
DESIGN LLP d/b/a SPECTOR GROUP ARCHITECTS,

Defendants.

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SSM DESIGN LLP i/s/h/a SSM DESIGN LLP d/b/a SPECTOR
GROUP ARCHITECTS,

Third-Party Plaintiff,

-against-

SEVERUD ASSOCIATES CONSULTING ENGINEERS P.C.,

Third-Party Defendant.

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JRM CONSTRUCTION MANAGEMENT, LLC

Second Third-Party Plaintiff,

-against-

AGL INDUSTRIES, INC., BINYAN CONSTRUCTION CORP.,
CONCRETE INDUSTRIES ONE CORP., UNIVERSAL
SERVICES GROUP, LTD., COGEN ELECTRICAL SERVICES,
INC., CAPITAL COOLING SYSTEMS LLC, AM
ARCHITECTURAL METAL & GLASS INC., and SEVERUD
ASSOCIATES CONSULTING ENGINEERS P.C.,

Second Third-Party Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 011) 181, 182, 183
were read on this motion to/for RENEWAL

APPEARANCES:

Ropers Majeski P.C., New York, New York (Scott James Laird, Esq., of counsel) for Second Third-Party Plaintiff.

HON. EMILY MORALES-MINERVA:

This is a breach of contract action in connection with the design and construction of a motor vehicle dealership located at 711 Eleventh Avenue, New York, New York 10019. In this motion (sequence number 011) Second Third-Party Plaintiff JRM CONSTRUCTION MANAGEMENT LLC ("JRM"), again moves, pursuant to CPLR § 3215, for an order: (1) granting it leave to enter a default judgment against Second Third-Party Defendants AGL INDUSTRIES, INC., CONCRETE INDUSTRIES ONE CORP., and COGEN ELECTRICAL SERVICES, INC., ("Second Third-Party Defendants") and (2) setting this matter down for an inquest at the time of trial to determine damages for the relief sought in their, including an award for costs, attorney's fees and sanctions. No opposition is submitted.

For the reasons set forth below, the court grants the motion.

BACKGROUND

The Court (N. Bannon, J.S.C.) previously denied JRM's motion (sequence no. 007) for an order granting it a default

judgment against the non-answering Second Third-Party Defendants AGL Industries, Inc., Concrete Industries One Corp., Cogen Electrical Services, Inc., and Capital Cooling Systems LLC, pursuant to CPLR § 3215, without prejudice to renewal within 30 days (see NYSCEF Doc. No. 129, Notice of Motion [seq. no. 007]; see also NYSCEF Doc. No. 136, Decision and Order, dated February 27, 2024). The court (Nancy Bannon, J.S.C.), denied the application on the grounds that JRM failed to show that it properly served the summons and complaint on the non-answering Second Third-Party Defendants and held that JRM failed to provide "proof of the facts constituting the claims," since JRM did not submit an affidavit of someone with personal knowledge of the facts (see NYSCEF Doc. No. 136, Decision and Order, p 2-3, citing CPLR § 3215[f]).¹

Within 30 days of the denial of motion sequence number 007, JRM timely submitted motion sequence number 010 seeking an order granting it a default judgment pursuant to CPLR § 3215 (see NYSCEF Doc. No. 167, Notice of Motion [seq. no. 010]). The undersigned denied the motion (seq. no. 010), as to the non-answering Second Third-Party Defendants, without prejudice to renewal within 30 days of the date of the court order (see

¹ The court granted motion sequence number 010 to enter a default judgment against Capital Cooling Systems LLC alone because, unlike the non-answering Second Third-Party Defendants AGL Industries, Inc., Concrete Industries One Corp., Cogen Electrical Services, Inc., the additional notice requirement pursuant to CPLR § 3215 (g)(4)(i) was not required for a limited liability company, like defendant Capital Cooling Systems LLC (see NYSCEF Doc. No. 178, Decision and Order, p 6).

NYSCEF Doc. No. 178, Decision and Order, dated July 2, 2024 [seq. no. 010]). The Court based its denial on the grounds that JRM did not provide proof of additional service on the Second Third-Party Defendants pursuant to CPLR § 3215 (g)(4)(i) (see id.).²

Now, within 30 days of the denial of motion sequence number 010, JRM thrice moves, pursuant to CPLR § 3215, for leave to enter a default judgment against the non-answering second third-party defendants. Once again, the non-answering Second Third-Party Defendants neither appeared nor submitted any opposition to the subject application.

ANALYSIS

On a motion for leave to enter default judgment pursuant to CPLR § 3215, movant must submit proof of service of the summons and complaint, the facts constituting the claim, and the default in answering or appearing (CPLR § 3215[f]; Bigio v Gooding, 213 AD3d 480, 481 [1st Dept 2023]). The movant must set forth enough facts to allow a court to assess whether a viable cause of actopm exists in order to demonstrate "facts constituting the claim" (Woodson v Mendon Leasing Corp., 100 NY2d 62, 71 [2003]).

The party in default is deemed to have admitted factual allegations in the complaint, including allegations of liability (see Al Fayed v Barak, 39 AD3d 371, 372 [1st Dept 2007]). Also, a court lacks personal jurisdiction over a defendant who is not properly served with process (see Preferred Mut. Ins. Co. v Lorenzo, 183 AD3d 1091 [3d Dept 2020]; see also Avis Rent A Car Sys., LLC v Scaramellino, 161 AD3d 572 [1st Dept 2018]

The party seeking a default judgment against a defendant corporation must also comply with the additional mailing requirements set forth in CPLR § 3215(g)(4)(i) and (ii). CPLR § 3215(g)(4)(i) provides that when the plaintiff serves the Secretary of State (see Business Corporation Law § 306(b)), then the plaintiff must also mail a copy of the summons and complaint to the corporation "via first class mail" at its "last known address." CPLR § 3215 (g)(4)(ii) provides that the additional service of the summons by mail shall be accompanied "by a notice to the corporation that service is being made or has been made pursuant to [Business Corporation Law § 306(b)]."

Here, the court finds that Second Third-Party Plaintiff, JRM, demonstrates entitlement to the entry of a default judgment against Second Third-Party Defendants AGL INDUSTRIES, INC., CONCRETE INDUSTRIES ONE CORP., and COGEN ELECTRICAL SERVICES, INC.

First, JRM submits an affidavit of service indicating that, on July 25, 2024, it mailed a copy of the Second Third-Party summons and complaint to the non-answering Second Third-Party Defendants via certified mail (see NYSCEF Doc. No. 180, Affidavit of Service). Next, JRM cures the defect in its previous application for default judgment (mot. seq. 010) where they failed to provide proof that it mailed the non-answering defendants an additional copy of the summons and verified complaint at their last known addresses by first class mail as required by CPLR § 3215(g)(4)(i). Here, JRM provides proof that it mailed a copy of the summons and verified complaint to the last known addresses of the three non-answering defendants, as it attached a copy the last known addresses on the Department of State website to its motion (see NYSCEF Doc. No. 183, exhibit A; Sterk-Kirch v Uptown Communications & Elec., Inc., 124 AD3d 413, 413-414 [1st Dept 2015]).

Lastly, JRM submits a verified Second Third-Party Complaint, as well as an affidavit from JRM's general counsel, Christopher Smith, in which the court finds the facts surrounding the claim adequately ascertainable (see NYSCEF Doc. No. 182, Second Third-Party Plaintiff's Affirmation in Support, p 2; citing NYSCEF Doc. No. 169, Affidavit in Support). In pertinent part, Christopher Smith affirms his personal knowledge of the contracts between JRM and the Second Third-Party

Defendants, the claims asserted in the verified Second Third-Party Complaint, and the scope of the work performed (see NYSCEF Doc. No. 169, Affidavit in Support, p 3). Thus, the court finds that that Second Third-Party Plaintiff, JRM, has satisfied its minimal burden for entry of default judgment as to liability against Second Third-Party Defendants' AGL INDUSTRIES, INC., CONCRETE INDUSTRIES ONE CORP., and COGEN ELECTRICAL SERVICES, INC. on the causes of action in Second Third-Party Plaintiff's complaint: (1) contractual indemnification, (2) breach of contract, (3) common-law indemnification, and (4) and contribution.

Accordingly, it is

ORDERED that the Second-Third Party Plaintiff's motion (seq. no. 011) pursuant to CPLR § 3215 for leave to enter a default judgment is granted against Second Third-Party Defendants AGL INDUSTRIES, INC., CONCRETE INDUSTRIES ONE CORP., and COGEN ELECTRICAL SERVICES, INC.; and it is further

ORDERED that an inquest on damages against AGL INDUSTRIES, INC., CONCRETE INDUSTRIES ONE CORP., and COGEN ELECTRICAL SERVICES, INC. on Second Third-Party Plaintiff JRM CONSTRUCTION MANAGEMENT LLC's First Cause of Action for contractual indemnification, Second Cause of Action for breach of contract, Third Cause of Action for common-law indemnification, and Fourth

Cause of Action for contribution is directed to be held at the time of trial; and it is further

ORDERED that within 30 days of entry, counsel for Second Third-Party Plaintiff JRM CONSTRUCTION MANAGEMENT LLC, shall serve a copy of this Decision and Order, with notice of entry, via first-class mail, upon all parties to this case at their last known business or residential address, and shall file such notice via NYSCEF; and it is further

ORDERED that the Clerk shall mark the file accordingly,

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

11/14/2024

DATE

Emily Morales-Minerva

EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: