

**CapitalPlus Supply Chain Partners, LLC v  
Raikos Elec. LLC**

2024 NY Slip Op 34219(U)

November 25, 2024

Supreme Court, New York County

Docket Number: Index No. 655432/2023

Judge: Nicholas W. Moyne

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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. NICHOLAS W. MOYNE PART 41M

Justice

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CAPITLALPLUS SUPPLY CHAIN PARTNERS, LLC,

Plaintiff,

- v -

RAIKOS ELECTRIC LLC, OCEAN PACIFIC INTERIORS,
D/B/A OPI CONSTRUCTION, UNITED FIRE & CASUALTY
COMPANY, AMERICAN NATIONAL INSULATION,
INC., SUNBELT RENTALS, INC., JOHN DOE 1 THROUGH
JOHN DOE 20

Defendant.

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INDEX NO. 655432/2023

MOTION DATE 04/19/2024

MOTION SEQ. NO. 001

AMENDED DECISION + ORDER
ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16,
17, 18, 19, 20, 21, 22, 23, 24

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, it is

Plaintiff, CapitalPlus Supply Chain Partners, LLC, commenced the underlying action
against defendants, Raikos Electric Limited Liability Company d/b/a Raikos Electric LLC,
Ocean Pacific Interiors d/b/a OPI Construction ("OPI"), United Fire & Casualty Company
("United"), American National Insulation, Inc., Sunbelt Rentals, Inc., and John Does 1 through
20, to recover for amounts allegedly owed and alleging claims of breach of contract, and/or
quantum meruit in the alternative, and account stated as against Raikos, as well as for foreclosure
of a mechanic's lien. In Motion Sequence 001, CapitalPlus moved for an order, pursuant to
CPLR § 3215, directing entry of a default judgment against Raikos for the amount of
\$101,432.18, plus statutory interest, and directing entry of a default judgment against defendants
OPI and United finding that (i) CapitalPlus entitled to enforce and foreclose its lien against the

lien discharge bond, Bond No. 55-224599, issued by OPI and United, and (ii) judgment against OPI and United, jointly and severally, in the sum of \$101,432.18, plus interest.

Pursuant to the Stipulation of Discontinuance, signed and dated December 3, 2023, the above-entitled action was discontinued with prejudice as against American National Insulation, Inc. (NYSCEF Doc. No. 11). Additionally, in accordance with the Stipulation of Withdrawal, the motion for a default judgment was withdrawn as against defendant, United Fire & Casualty Company (NYSCEF Doc. No. 24). As required under the Stipulation, an answer was filed by United on May 30, 2024 (NYSCEF Doc. No. 26). Therefore, this motion for default is not applicable to defendant United and United's answer may be deemed timely filed and/or accepted.

On November 1<sup>st</sup> and 10<sup>th</sup>, 2023, plaintiff, in accordance with the methods of service proscribed by Limited Liability Company Law § 303 and Business Corporation Law § 306, served the defendants OPI and Raikos with the summons and complaint for this action (NYSCEF Doc. No. 7; 10). The applicable time period in which defendants ought to have answered or otherwise appeared has passed, and the defendants have failed to do so. On April 19, 2024, within the statutory one-year period following the defendants' defaults in responding to the complaint, CapitalPlus filed its application seeking entry of a default judgment (*see* CPLR § 3215 [a]).

Additional notice was given as required by CPLR § 3215 (g) and, as required by CPLR § 3215 (f), plaintiff has provided proof of service of the summons and complaint, the facts supporting each of its claims against defendants, their defaults, and the amounts due, through the verified complaint and affidavit with supporting exhibits of Rich James, Chief Financial Officer of plaintiff, and a party with personal knowledge (NYSCEF Doc. No. 13-21; *see Bigio v Gooding*, 213 AD3d 480, 481 [1st Dept 2023] ["To demonstrate facts constituting the claim, the

movant need only proffer proof sufficient to enable a court to determine that a viable cause of action exists”). As relevant here, plaintiff claims that Raikos entered into purchase agreements with plaintiff, where plaintiff agreed to furnish electrical materials and equipment for use and/or installation at a project at the property located at 60 Hudson Street. Specifically, plaintiff has shown entitlement to the sum of \$101,432.18 as against Raikos, demonstrating a meritorious breach of agreement and/or account stated through proof of the purchase agreements and invoices for the above amount which remain unpaid (NYSCEF Doc. No. 18; 19).

To recover on a lien, a plaintiff must bring an action for the enforcement of the lien, obtain a judgment as if the lien still existed, and such judgment would then be paid by the surety for the amount found due on the lien (*Romar Sheet Metal, Inc. v F.W. Sims, Inc.*, 8 Misc 3d 1021(A) [Sup Ct, NY County 2005]; see also *Martirano Const. Corp. v Briar Contr. Corp.*, 104 AD2d 1028, 1031 [2d Dept 1984] [Such judgment should then contain a provision directing the surety to pay the amount found due upon the lien]). Accordingly, having timely commenced this action seeking to enforce and/or foreclose the lien, in regards to the date of the lien’s filing and discharge by bond, plaintiff has demonstrated its entitlement to enforcement of the lien against the lien discharge bond as against OPI, through the purchase agreements and unpaid invoices, the notice of mechanic’s lien, and the bond discharging the lien (*see Nouveau El. Indus., Inc. v Tracey Towers Hous. Co.*, 95 AD3d 616, 617 [1st Dept 2012]; NYSCEF Doc. No. 17-21). Specifically, plaintiff has sufficiently shown that on March 7, 2023, a valid mechanic’s lien in the amount of \$101,432.18, plus interest, was filed with the Clerk’s Office of New York County against the property that was the subject of the project for which the purchase agreements were issued, and the materials were furnished (NYSCEF Doc. No. 20). Additionally, plaintiff has demonstrated that on or around April 10, 2023, in accordance with Lien Law §§ 19(4) and 21(5),

OPI, as Principal, with defendant United, as Surety, obtained and executed a bond discharging the above-filed mechanics lien against the property in the penal sum of \$111,575.40, an amount equal to 110% of the lien amount (NYSCEF Doc. No. 21). Such lien discharge bond was “conditioned for the payment of any and all judgments which may be rendered against said property in favor of CapitalPlus Supply Chain Partners, LLC., or its/their legal representatives or assigns, in any action or proceeding to enforce the alleged lien” (NYSCEF Doc. No. 21).<sup>1</sup> Therefore, as plaintiff has demonstrated compliance with the statutory requirements of CPLR § 3215 *et. seq.*, and demonstrated its entitlement to recover, the motion for entry of a default judgment as against defendants Raiko and OPI may be granted.

Accordingly, it is hereby

ORDERED that the motion by plaintiff CapitalPlus Supply Chain Partners, LLC is GRANTED; and it is further

ADJUDGED and ORDERED that plaintiff CapitalPlus Supply Chain Partners, LLC, having an address at 2510 Solway Road, Knoxville, TN 37931, is granted a judgment against defendant, Raikos Electric Limited Liability Company d/b/a Raikos Electric LLC, having an address at 495 Canal Street, New York, NY 10013, in the amount of \$101,432.18, the outstanding amount due; and it is further

ADJUDGED and ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff CapitalPlus Supply Chain Partners, LLC and against defendant Raikos Electric Limited Liability Company d/b/a Raikos Electric LLC, in the amount of \$101,432.18, plus interest

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<sup>1</sup> CapitalPlus has complied with requirements for discharging of a bond, which requires that “the principal and surety on the bond, the contractor, and all claimants who have filed notices of claim prior to the date of the filing of such summons and complaint” be necessary parties to the action against the bond (*Doma Inc. v 885 Park Ave. Corp.*, 59 Misc 3d 703, 705 [Sup Ct, NY County 2018], quoting Lien Law § 37 [7]).

at the rate of \_\_\_\_\_ % through the date of this order, as calculated by the Clerk in the amount of \$ \_\_\_\_\_, together with costs and disbursements in the amount of \$ \_\_\_\_\_ as taxed by the Clerk upon the submission of an appropriate bill of costs, for the total judgment amount of \$ \_\_\_\_\_, and that the plaintiff have execution thereof; and it is further

ADJUDGED and ORDERED that the plaintiff CapitalPlus Supply Chain Partners, LLC, with an address of 2510 Solway Road, Knoxville, TN 37931, is granted a default judgment in its favor and against defendant, Ocean Pacific Interiors d/b/a OPI Construction, having an address at 140 West Street, New York, NY 10004, on the cause of action to enforce and/or foreclose on the bond, Bond No. 55-224599, discharging the mechanics lien recorded against the real property at 60 Hudson Street, New York, New York 10013, Block 144, Lot 40, as filed March 7, 2023, with the Clerk's Office of New York County; and it is further

ADJUDGED and ORDERED that defendant Ocean Pacific Interiors d/b/a OPI Construction, with an address of 140 West Street, New York, NY 10004, and/or Surety United Fire & Casualty Company, with an address of c/o NFP Property & Casualty Services, Inc., 45 Executive Drive, Plainview, NY 11803, shall pay to plaintiff, CapitalPlus Supply Chain Partners, LLC, with an address of 2510 Solway Road, Knoxville, TN 37931, within 30 days of the service of a copy of this order along with the notice of entry, up to but not to exceed the full amount due under the Bond, Bond No. 55-224599 undertaken and issued by Principal, Ocean Pacific Interiors d/b/a OPI Construction, and Surety, United Fire & Casualty Company, filed with the Clerk's Office of New York County on April 10, 2023, and discharging the mechanics lien against 60 Hudson Street, New York, New York 10013, Block 144, Lot 40, as filed with the Clerk's Office of New York County on March 7, 2023, the said amount to be applied toward the satisfaction of the judgment entered by this court, in this Decision and Order and dated November 25, 2024,

against defendant, Raikos Electric Limited Liability Company d/b/a Raikos Electric LLC, and that plaintiff shall have execution therefore.

This constitutes the decision and order of the court.

11/25/2024  
DATE

  
NICHOLAS W. MOYNE, J.S.C.

DATE

CLERK

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