

Wonder Works Constr. Corp v 29 John St., LLC.

2010 NY Slip Op 30080(U)

January 13, 2010

Supreme Court, New York County

Docket Number: 603075/09

Judge: Judith J. Gische

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

PRESENT: HON. JUDITH J. GISCHE
J.S.C.

PART 10

Index Number : 603075/2009
WONDER WORKS CONSTRUCTION CORP
vs.
29 JOHN STREET LLC
SEQUENCE NUMBER : 001
DEFAULT JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

motion (s) and cross-motion(s)
decided in accordance with
the annexed decision/order
of even date.

FILED
JAN 15 2010
NEW YORK
COUNTY CLERK'S OFFICE

Dated: JAN 13 2010

HON. JUDITH J. GISCHE J.S.C.
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10

-----X
WONDER WORKS CONSTRUCTION CORP.,

Plaintiff,

-against-

29 JOHN STREET, LLC.,

Defendant.
-----X

Decision/Order

Index No.: 603075/09
Seq. No. : 001

Present:
Hon. Judith J. Gische
J.S.C.

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

Papers

Pltf's n/m [§ 3215] w/YT affirm, JK affid, exhibits 1

FILED
JAN 15 2010
NEW YORK
COUNTY CLERK'S OFFICE

Upon the foregoing papers, the decision and order of the court is as follows:

This is an action for breach of an oral contract. Plaintiff now moves, pursuant to CPLR § 3215, for an order directing the Clerk of Court to enter a default judgment in its favor and against defendant, 29 John Street, LLC. This motion has been submitted to the Court without opposition.

The action was commenced by the filing of the summons with notice, filed with the Clerk of the Court on October 6, 2009, setting forth the nature of the action, the relief sought, and the sum of money for which judgment may be taken in case of default, pursuant to CPLR § 305(b).

Defendant is a domestic limited liability company. Plaintiff complied with the service requirements of CPLR § 311-a and LLC § 303 by serving the summons with notice on the Secretary of State and serving an additional copy on defendant on

October 8, 2009. The further notice requirements of CPLR § 3215 do not apply, although plaintiff seeks a money judgment, because defendant is not a natural person (CPLR § 3215 [g] [4] [I]). The time to answer has expired without defendant interposing an answer or otherwise appearing in this action. Therefore, defendant has defaulted in appearing in this motion.

Discussion

Plaintiff is entitled to a default judgment, provided it otherwise demonstrates that it has a *prima facie* cause of action. Gagen v. Kipany Productions Ltd., 289 A.D.2d 844 (3rd dept. 2001). A default in answering the complaint constitutes an admission of the factual allegations therein and the reasonable inferences which may be made therefrom [Rokina Optical Co., Inc. v. Camera King, Inc., 63 N.Y.2d 728 (1984)]. An application for a default judgment must be supported by either an affidavit of facts made by one with personal knowledge of the facts surrounding the claim (Zelnick v. Biderman Industries U.S.A., Inc., 242 AD2d 227 [1st Dept 1997]; and CPLR § 3215 [f]) or a complaint verified by a person with actual knowledge of the facts surrounding the claim (Hazim v. Winter, 234 AD2d 422 [2d Dept 1996]; and CPLR § 105 [u]).

Plaintiff provides the sworn affidavit of Joseph Klaynberg, President of plaintiff, who has personal knowledge of the facts surrounding the claim. The following facts have been established by the plaintiff in the summons with notice and through the sworn affidavit of Joseph Klaynberg:

Plaintiff asserts a cause of action against defendant for breach of an oral contract. Plaintiff claims that at the oral request of defendant, that plaintiff performed labor and

* 4]

furnished materials to repair showers in the residential apartments of a building located at 71-73 Nassau Street a/k/a 25-31 John Street, New York, NY ("building"). Plaintiff alleges that it incurred expenses of \$210,498.40 for labor and materials and that although it demanded payment by defendant, defendant failed to reimburse plaintiff for such costs.

In order to state a cause of action for breach of contract, the pleading must allege the existence of a valid and enforceable agreement, due performance by plaintiff, and a failure of performance by defendant, resulting in damages (see Furia v Furia, 116 AD2d 694, 695 [2d Dept 1986]).

Plaintiff provides business records indicating that plaintiff spent \$109,694.37 on other vendors; \$81,971.43 and \$ 10,485.81 on labor costs; and further invoices indicate that plaintiff spent \$7,075.59 and \$1,271.20 on labor costs. The business records and invoices indicate that plaintiff spent a total sum of \$210,498.40.

Accordingly, plaintiff's motion for default judgment is granted against defendant for breach of contract and plaintiff is entitled to a money judgment in the amount set forth in the summons with notice, to wit: \$210,498.40, with interest from October 6, 2009, the date this action was commenced.

Conclusion

In accordance herewith, it is hereby:

ORDERED that plaintiff's motion is granted and that plaintiff is entitled to a default judgment against defendant; and it is further

ORDERED that the clerk is hereby directed to enter a money judgment in favor of plaintiff, Wonder Works Construction Corporation, and against defendant, 29 John

* 5]
Street LLC, in the amount demanded in the summons with notice, to wit: two hundred ten thousand four hundred ninety-eight and forty cents (\$210,498.40); and it is further

ORDERED that interest shall run from the date this action was commenced, October 6, 2009, at the statutory rate.

Any requested relief not expressly addressed herein has nonetheless been considered by the court and is hereby denied.

This shall constitute the decision and order of the Court.

Dated: New York, New York
January 13, 2010

So Ordered:



HON. JUDITH J. GISCHE, J.S.C.
HON. JUDITH J. GISCHE
J.S.C.

FILED
JAN 15 2010
NEW YORK
COUNTY CLERK'S OFFICE