

**Commissioners of the State Ins. Fund v Millenium  
Homes, LLC**

2010 NY Slip Op 30647(U)

March 22, 2010

Supreme Court, Nassau County

Docket Number: 015579-06

Judge: Timothy S. Driscoll

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**SUPREME COURT-STATE OF NEW YORK  
SHORT FORM ORDER**

**Present:**

**HON. TIMOTHY S. DRISCOLL**  
**Justice Supreme Court**

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**COMMISSIONERS OF THE STATE,  
INSURANCE FUND,**

**Plaintiff,**

**-against-**

**MILLENIUUM HOMES, LLC; MILLENIUUM (USA)  
LLC; NEW MILLENIUUM PROPERTIES LLC,**

**Defendants.**

**TRIAL/IAS PART: 22  
NASSAU COUNTY**

**Index No: 015579-06  
Motion Seq. No: 1  
Submission Date: 2/1/10**

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**Papers Read on this Motion:**

**Notice of Motion, Affirmation in Support and Exhibits...x**

This matter is before the court on the motion by Plaintiff Commissioners of the State Insurance Fund ("State Fund" or "Plaintiff") filed December 16, 2009 and submitted February 1, 2010. For the reasons set forth below, the Court grants Plaintiff's motion for a judgment against Defendants in the principal sum of \$121,000 and directs that an inquest will be held on the issues of interest and collection costs.

**BACKGROUND**

**A. Relief Sought**

Plaintiff moves for an Order, pursuant to CPLR §§ 3215 and 8101 and State Finance Law § 18, directing the Clerk of the Court ("Clerk") to enter judgment in favor of the Plaintiffs and against the three (3) named Defendants in the sum of \$121,000 plus interest from July 16, 2006 and the costs and disbursements of this action. <sup>1</sup>

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<sup>1</sup> As outlined below, two matters were consolidated into the instant action.

Defendants have submitted no opposition or other response to Plaintiff's motion.

B. The Parties' History

Plaintiff affirms as follows in support of its motion:

The State Fund filed two actions against the three named Defendants, Millenium Homes, LLC; Millenium (USA) LLC; and New Millenium Properties LLC for billed and unpaid workers' compensation insurance premiums due on cancelled policy number 13574587 ("Policy"). The first action ("First Action") was titled *[State Fund] v. Millenium (USA) LLC; New Millenium Properties LLC*, Index Number 020133-06. The second action ("Second Action") was titled *[State Fund] v. Millenium Homes, LLC*,<sup>2</sup> Index Number 015579-06.

Plaintiff obtained a default judgment ("Prior Judgment") in the Second Action (Ex. F to Aff. in Support). Plaintiff subsequently agreed to the vacatur of the Prior Judgment and consented to the consolidation of the First and Second Actions. These two actions were consolidated by stipulation dated December 20, 2006 ("Stipulation") (Ex. G to Aff. in Support), pursuant to which the two cases would contain the caption reflected on this Order ("Consolidated Action"). Following the Consolidation, Defendants served two Verified Answers dated December 28, 2006, corresponding to the First and Second Actions.

By consent and Order of the Honorable Leonard B. Austin dated February 8, 2008, this matter was referred to Special Referee Thomas V. Dana ("Referee") for the purpose of non-binding mediation and settlement negotiations. On March 6, 2008, the parties resolved the matter and entered into a stipulation of settlement ("Settlement Agreement") signed by counsel for the parties and the Referee (Ex. J to Aff. in Support). The Settlement Agreement reflects that it was filed with the Clerk of the Court on March 11, 2008.

Pursuant to the Settlement Agreement, Defendants agreed to pay the sum of \$121,000.00 according to the following schedule: 1) \$5,000 on or before April 15, 2008, 2) \$5,000 on or before May 15, 2008, 3) \$10,000 per month beginning June 15, 2008 and continuing for a period of ten (10) months up to and including March of 2008 [sic], and 4) \$11,000 on or before April 15, 2008 [sic]. The Settlement Agreement also provided that 1) in the event that

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<sup>2</sup> In paragraph 2 of its Affirmation in Support, Plaintiff spells the defendant's name in the Second Action "Milenium Homes, LLC," but the verified complaint (Ex. C to Aff. in Support) reflects that the correct spelling is "Millenium Homes, LLC."

Defendant [sic] obtained a certificate of insurance from an insurance carrier for any subcontractor for whom premium charges were made, Plaintiff agreed to credit those premium charges against the amount due under the Settlement Agreement, to be deducted from the final payments due; 2) in the event that Defendant [sic] defaulted in the payment of any installment required under the Settlement Agreement, Plaintiff agreed to give seven (7) days faxed notice of default to Defendants [sic] counsel and, if that default remained uncured after five (5) days, Plaintiff was permitted to enter judgment for the total sum due under the Settlement Agreement, less any payments made, plus interest, costs and disbursements; 3) the action was discontinued by execution of the Settlement Agreement, without costs and disbursements, but the Court retained jurisdiction to enforce the Settlement Agreement; and 4) both counsel represented that they had consulted with their respective clients and had authority to enter into the Settlement Agreement. As noted, the Settlement Agreement referred to Defendants in the singular (*i.e.* “Defendant”) although the First and Second Actions were consolidated and it appears to the Court that the Settlement Agreement was intended to apply to all Defendants in the Consolidated Action.

Plaintiff affirms that it received no payments pursuant to the Settlement Agreement. As per that Agreement, Plaintiff faxed a notice to Defendants’ counsel (“Default Letter”) on November 25, 2008 advising him of Defendants’ default. In the Default Letter (Ex. K to Aff. in Support), Plaintiff advised Defendants’ of their default and outlined the payments still due which consisted of 1) payments of \$5,000 due in April and May of 2008, and 2) payments of \$10,000 due in the months of June through November of 2008. Plaintiff advised Defendants’ counsel that, pursuant to the Settlement Agreement, Defendants were required to cure the default within five (5) days or Plaintiff would be entitled to a judgment for \$121,000, the total sum due pursuant to the Settlement Agreement, plus interest, costs and disbursements. Plaintiff asked Defendants’ counsel to have Defendants forward payment of \$70,000 immediately. No payments have been made.

### C. The Parties’ Positions

Plaintiff seeks an Order directing the Clerk to enter judgment in favor of the Commissioners of the State Insurance Fund and against the three Defendants Millenium Homes, LLC; Millenium (USA) LLC; and New Millenium Properties LLC: 1) in the principal sum of

\$121,000.00, 2) with interest from July 16, 2006, and 3) including collection costs of \$26,620.00 pursuant to CPLR § 8101 and State Finance Law Section 18, the latter of which provides for collection costs of 22% of the principal amount provided that amount does not exceed Plaintiff's estimated cost of processing, handling and collecting such debt. Plaintiff affirms that the Office of the Chief Financial Officer of the State Insurance Fund advised Plaintiff that the cost of collecting this debt is estimated to exceed 22% of the principal amount sought.

Defendants have submitted no opposition or other response to the instant motion.

#### RULING OF THE COURT

CPLR § 2104, titled "Stipulations" provides as follows:

An agreement between parties or their attorneys relating to any matter in an action, other than one made between counsel in open court, is not binding upon a party unless it is in a writing subscribed by him or his attorney or reduced to the form of an order and entered. With respect to stipulations of settlement and notwithstanding the form of the stipulation of settlement, the terms of such stipulation shall be filed by the defendant with the county clerk.

CPLR § 8101 provides as follows:

The party in whose favor a judgment is entered is entitled to costs in the action, unless otherwise provided by statute or unless the court determines that to so allow costs would not be equitable, under all of the circumstances.

State Finance Law § 18(5) provides as follows:

In addition to the charges referred to in subdivision four of this section, and unless provided otherwise by contract, statute or regulation, a debtor that fails to make payment of a debt subject to this section within ninety days of receipt by the debtor of the first billing invoice or notice may be assessed an additional collection fee charge to cover the cost of processing, handling and collecting such debt, not to exceed twenty-two percent of the outstanding debt, which collection fee shall be added to and payable in the same manner as the outstanding debt. The assessed collection fee charge may not exceed the agency's estimated cost of processing, handling and collecting such debt.

The Settlement Agreement, which was executed by counsel for the parties and filed with the county clerk, is binding on the parties. The Court is somewhat troubled, however, by the apparent typographical errors and lack of specificity in the Settlement Agreement. Specifically, the payment terms apparently contain errors regarding the due dates of certain payment, as the

Court gleans that the provision requiring payments of "\$10,000 per month beginning June 15, 2008 and continuing for a period of ten (10) months up to and including March of 2008 [sic]" was intended to require payment from June 15, 2008 to March of 2009. Similarly, the Court surmises that the final payment was due in April of 2009, not 2008. In addition, the Settlement Agreement refers to Defendants in the singular when, pursuant to the Stipulation, the Consolidated Action included all Defendants.

Notwithstanding the above, the Court concludes that Defendants agreed to pay the sum of \$121,000 and defaulted on their obligations. In light of the foregoing, the Court grants Plaintiff's motion for a judgment against Defendants in the principal sum of \$121,000 and directs that an inquest will be held on the issues of interest and collection costs.

In light of the foregoing, it is hereby:

**ORDERED**, that Plaintiff have judgment against Defendants in the principal sum of \$121,000; and it is further

**ORDERED**, that this matter is respectfully referred to Special Referee Frank Schellace on April 23, 2010 at 9:30 a.m. to hear and determine all issues relating to the determination of interest and collection fees; and it is further

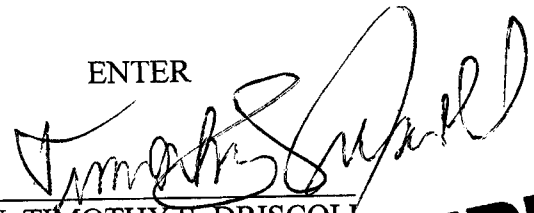
**ORDERED**, that counsel for Plaintiff shall serve upon counsel for Defendants, by certified mail, return receipt requested, a copy of this Order with Notice of Entry, a Notice of Inquest or a Note of Issue and shall pay the appropriate filing fees on or before April 9, 2010; and it is further

**ORDERED**, that the County Clerk, Nassau County is directed to enter a judgment in favor of the Plaintiff and against the Defendants in accordance with the decision of the Special Referee.

All matters not decided herein are hereby denied.

This constitutes the decision and order of the Court.

DATED: Mineola, NY  
March 22, 2010

ENTER  
  
HON. TIMOTHY S. DRISCOLL

**ENTERED**  
MAR 24 2010  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE