

Fry Reglet Corp. v Aramalla

2011 NY Slip Op 32703(U)

October 17, 2011

Sup Ct, Nassau County

Docket Number: 13079/10

Judge: Anthony L. Parga

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SHORT FORM ORDER
SUPREME COURT-NEW YORK STATE-NASSAU COUNTY
PRESENT:

HON. ANTHONY L. PARGA
JUSTICE

-----X PART 8
FRY REGLET CORPORATION,

Plaintiff,

-against-

INDEX NO. 13079/10

MOTION DATE: 08/23/11
SEQUENCE NO. 02, 03, 04

PURNACHANDRA ARAMALLA, USHA
ARAMALLA, BORO PLASTERING CORP.,
GARY M. ANNINO d/b/a BORO PLASTERING
CORP., and "JOHN DOE NO. 1" through
"JOHN DOE NO. 2",

Defendants.

-----X

Notice of Motion, Affs & Exs (Seq. 02).....	<u>1</u>
Notice of Motion, Affs & Exs (Seq. 04).....	<u>2</u>
Order to Show Cause, Affs. & Exs (Seq. 03).....	<u>3</u>
Affirmation in Opposition & Exs.....	<u>4</u>

Upon the foregoing papers, plaintiff's motion (Seq. 02) for an order granting default judgment against defendants Boro Plastering Corp. and Gary M. Annino d/b/a Boro Plastering Corp, and defendant Purnachandra Aramalla and Usha Aramalla's motion (Seq. 04) for an order granting default judgment against defendants Boro Plastering Corp. and Gary M. Annino d/b/a Boro Plastering Corp., are both granted without opposition to the extent directed below. The motion, brought by Order to Show Cause (Seq. 03), by non-party Rick Anderson, for an order quashing the subpoena, dated July 26, 2011, and served upon him on August 8, 2011, is granted to the extent that it is modified as directed below.

In this action, the plaintiff alleges that the defendants failed to issue payment for the delivery of materials by the plaintiff to the defendants relating to a home improvement project commenced by homeowners, defendants Purnachandra Aramalla and Usha Aramalla (hereinafter collectively "Aramallas"). It is alleged that Boro Plastering Corp. (hereinafter "Boro") entered

into an agreement whereby plaintiff agreed to fabricate and supply custom exterior extruded aluminum to Boro in connection with the home improvement project, and Boro agreed to pay for same. It is further alleged that the Aramallas entered into an agreement with Boro with respect to the home improvement project. Same is denied by the Aramallas.

Plaintiff moves for a default judgment against defendants Boro Plastering Corp. and Gary M. Annino d/b/a Boro Plastering Corp. In support of its motion, plaintiff submits a Summons and Complaint, along with affidavits of service indicating timely service of same upon both defendants on July 20, 2010. Plaintiff further submits an affidavit of service pursuant to CPLR §3215(g), indicating that an additional copy of the summons and complaint was mailed to said defendants on June 21, 2011. In addition, plaintiff submits an affidavit of Stephanie Tripicchio, the accounting manager of plaintiff, setting forth the merits of this action. To date, defendants Boro Plastering Corp. and Gary M. Annino d/b/a Boro Plastering Corp. have failed to answer or otherwise appear in this action.

In addition, defendants Aramallas move for default judgment on their cross-claim against defendants Boro Plastering Corp. and Gary M. Annino d/b/a Boro Plastering Corp., as their cross-claim contains a demand for an answer. (See, CPLR §3011). In support of their motion, the Aramallas submit a copy of their verified answer with cross-claim and an affidavit of service indicating that same was served upon Boro Plastering Corp. and Gary M. Annino d/b/a Boro Plastering Corp. on August 23, 2010. In addition, the Aramallas submit an affidavit of Christopher Quinn, a supervisor for the current general contractor of the home improvement project at their premises, Ben Krupinski General Contractors, Inc. ("BKGC"), in which Mr. Quinn attests that BKGC paid \$57,000 to Boro for the delivery of the Fry Reglet material. Defendants Aramallas further submit copies cancelled checks in the amount of \$57,000 issued by BKGC to Boro, as well as Boro's invoice. The Court notes that Boro Plastering Corp. and Gary M. Annino d/b/a Boro Plastering Corp. were timely served with the summons and complaint on the date the cross-claim was served, so there was jurisdiction over said defendants at the time the cross-claim was asserted. To date, defendants Boro Plastering Corp. and Gary M. Annino d/b/a Boro Plastering Corp. have failed to answer the cross-claim.

Accordingly, plaintiff's motion for default judgment against defendants Boro Plastering Corp. and Gary M. Annino d/b/a Boro Plastering Corp. is granted without opposition, and defendants Aramallas motion for default judgment on its cross-claim against Boro Plastering

Corp. and Gary M. Annino d/b/a Boro Plastering Corp. is also granted without opposition. It is ordered that upon the conclusion of discovery in the action against defendants Aramalla, plaintiff shall serve a Notice of Inquest as against defaulting defendants Boro Plastering Corp. and Gary M. Annino d/b/a Boro Plastering Corp., together with a copy this order and the Note of Issue, upon the said defendants by certified mail, return receipt requested, and upon counsel for defendants Aramallas by regular mail. Plaintiff shall also serve copies of same, together with receipt of payment, upon the Calendar Clerk of this court.

Upon proof of the Note of Issue filing, the Clerk of the Calendar Control Part ("CCP"), shall place this matter on the CCP Trial Calendar of Nassau County Supreme Court for a trial of this matter and an inquest to assess damages against defendants Boro Plastering Corp. and Gary M. Annino d/b/a Boro Plastering Corp. on the plaintiff's causes of action against said defendants and defendant Aramallas cross-claim against said defendants. The inquest shall be held at the time of trial, unless the action is settled or otherwise dismissed or discontinued against defendants Aramallas, in which case, upon proof of the Note of Issue filing and service of the Notice of Inquest as directed above, the Clerk of the Calendar Control Part ("CCP") shall place this matter on the CCP Trial Calendar for an inquest to assess damages against defaulting defendants Boro Plastering Corp. and Gary M. Annino d/b/a Boro Plastering Corp. Upon receipt of a date for the inquest, plaintiff shall notice defendants Boro Plastering Corp. and Gary M. Annino d/b/a Boro Plastering Corp. of same by certified mail, return receipt requested, at least fifteen (15) days prior to the date of the inquest.

The Justice presiding in CCP may refer this matter to a Justice, Special Referee or Judicial Hearing Officer as he or she may determine.

Lastly, defendants Aramallas served a subpoena upon their former general contractor, non-party, Roy Anderson, referred to in the subpoena as "Rick Anderson" (hereinafter "Anderson"), to testify and produce documentation relating to services and/or improvements at the Aramalla residence. Non-party Rick Anderson moved by Order to Show Cause to quash same. There is currently an arbitration scheduled in a matter brought by Anderson against the Aramallas for non-payment relating to a construction contract wherein Anderson agreed to perform construction work at the premises owned by the Aramallas. Said action was brought pursuant to the mandatory arbitration clause in the above-noted contract and is pending before the American Arbitration Association. The matter is entitled, *Roy Anderson Associates, Inc. v.*

Purna Chandra Aramalla and bears AAA number, 13 528 00639 10. Movant Anderson contends that said arbitration is scheduled to be held between October 26, 2011 and November 22, 2011.

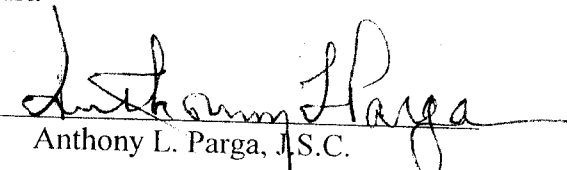
The Court notes that defendants Aramallas previously brought a third party action herein against Anderson's company, Roy Anderson Associates, Inc., which was discontinued after Roy Anderson Associates, Inc. brought a motion to dismiss. Anderson contends that he has proof of his company's contract with Boro and proof of its payment to Boro. In addition, in support of Aramallas default motion against Boro herein, the Aramallas have submitted proof of payment to Boro by its current general contractor.

As there is an arbitration pending in the coming month in the *Roy Anderson Associates, Inc. v. Purna Chandra Aramalla* matter, non-party Anderson contends that the instant subpoena for his testimony was served as a means to gain an improper and unfair advantage in the arbitration matter. It is noted that none of the party deposition have been held in the instant action to date.

Accordingly, it is hereby ordered that the subpoena, dated July 26, 2011 and served upon non-party Anderson, is modified to the extent that non-party witness Anderson shall not be required to testify pursuant to said subpoena until after the completion of the pending arbitration in the *Roy Anderson Associates, Inc. v. Purna Chandra Aramalla* (AAA number: 13 528 00639 10) matter and after the party depositions in the instant action have been held. It is, however, ordered that non-party witness Anderson shall produce the documentary evidence and records demanded within the subpoena, dated July 26, 2011, within thirty (30) days of this Order.

This constitutes the decision and Order of this Court.

Dated: October 17, 2011


Anthony L. Parga, J.S.C.

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ENTERED
OCT 19 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE