

Board of Mgrs. of Fultonhaus Condominium v 119 Fulton St. Realty, LLC
2014 NY Slip Op 32934(U)
November 13, 2014
Supreme Court, New York County
Docket Number: 651576/2012
Judge: Shirley Werner Kornreich
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

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BOARD OF MANAGERS OF FULTONHAUS
CONDOMINIUM,

Index No.: 651576/2012

DECISION & ORDER

Plaintiff,

-against-

119 FULTON STREET REALTY, LLC, DANIELL REAL
ESTATE PROPERTIES, LLC, 119 FULTON STREET LLC,
ISSAKHAR HACMUN, YOM TOV SAMIA, THE SHVO
GROUP, LLC, TAUBE MANAGEMENT GROUP, HUSTVEDT
CUTLER ARCHITECTS, GOLDSTEIN ASSOCIATES, PLLC,
and I.V.L.N. CONSULTING ENGINEERS,

Defendants.

-----X
119 FULTON STREET REALTY, LLC, DANIELL REAL
ESTATE PROPERTIES, LLC, 119 FULTON STREET LLC,
ISSAKHAR HACMUN, and YOM TOV SAMIA,

Third-Party Plaintiffs,

-against-

NTD CONSTRUCTION CORP. and GACE CONSULTING
ENGINEERS, P.C. f/k/a GOLDSTEIN ASSOCIATES, PLLC,

Third-Party Defendants.

-----X
HUSTVEDT CUTLER ARCHITECTS,

Second Third-Party Plaintiff,

-against-

GACE CONSULTING ENGINEERS, P.C., f/k/a, GOLDSTEIN
ASSOCIATES, PLLC, and NTD CONSTRUCTION CORP.,
a/k/a, EMERALD CONSTRUCTION GROUP, a/k/a, NEWTON
CONSTRUCTION CORP.,

Second Third-Party Defendants.

-----X
NTD CONSTRUCTION CORP.,

Third Third-Party Plaintiff,

-against-

CASTLE RESTORATION AND CONSTRUCTION, INC.,
 DANICA GROUP, LLC, GGMG GROUP, JOLT ELECTRICAL
 CONTRACTING, INC., MILLENNIUM ELEVATOR, INC.,
 ROBBINS CONSTRUCTION CORP., ROKAH BENY,
 ROSS & ASSOCIATES, LLC, SPRAY-TECH CORP., STREAM
 LINE WINDOWS, STUCCO SPECIALISTS, INC., O'GRADY
 CONSTRUCTION CORP., QUALITY STEEL CONTRACTING,
 INC., ALUBON, LTD., DOT CONSTRUCTION OF NY, INC.,
 ELITE DESIGN OF NY, INC., and WOODBURY CONSTRUCTION,
 INC.,

Third Third-Party Defendants.

-----X
 SHIRLEY WERNER KORNREICH, J.:

NTD Construction Corp. (NTD), a defendant in the first third-party action and plaintiff in the third third-party action, moves, pursuant to CPLR 3215, for a default judgment against the following third third-party defendants: GGMG Group, Millennium Elevator, Inc., Jolt Electrical Contracting, Inc., Spray-Tech Corp., and O'Grady Construction Corp. (collectively, the TTP Defendants).¹ The TTP Defendants have not filed opposition papers. NTD's motion, however, is denied for the reasons that follow.

This case concerns a dispute over renovations performed on a building located at 119 Fulton Street in Manhattan (the Building). Familiarity with the court's prior decisions is presumed. In short, almost every entity involved with the subject renovation has been sued in this action.

The moving party, NTD, the general contractor, was sued by the first third-party plaintiffs. NTD, in turn, sued its subcontractors in the third third-party action for contribution

¹ NTD also moved for a default judgment against third third-party defendant Castle Restoration and Construction, Inc., but withdrew the motion as against that defendant. *See* Dkt. 210.

and indemnification. NTD's operative pleading, the Second Amended Third Third-Party Complaint (the SATTPC), was filed on September 16, 2014. *See* Dkt. 193.

In support of the instant motion, NTD's counsel submitted an affirmation attesting to and affidavits evidencing service upon the TTP Defendants. *See* Dkt. 198. However, such service was limited to NTD's prior pleadings and was made via the Secretary of State between September 9, 2013 and February 11, 2014. Since the SATTPC was not filed until September 16, 2014, the affidavits of service submitted are inadequate to demonstrate that service of the operative pleading occurred. Indeed, the affirmation of service attached to the SATTPC indicates that it was only served via email on the County Clerk and all counsel of record. *See* Dkt. 193 at 26. Ergo, it appears that it was not served upon the TTP Defendants.

Additionally, NTD's affidavit of merit, from its CEO (Tim Devlin), is dated September 15, 2014, and appears to have been prepared in support of a contemplated default judgment motion for failure to answer NTD's prior pleadings. *See* Dkt. 203 at 12-14. The SATTPC was not filed until September 16. It is unclear if Devlin is actually attesting to the merit of the SATTPC.

Finally, the instant motion was filed on October 10, 2014, a mere 24 days after the SATTPC's filing. Even if service was effected, it is not clear that the time for the TTP Defendants to answer the SATTPC has elapsed.

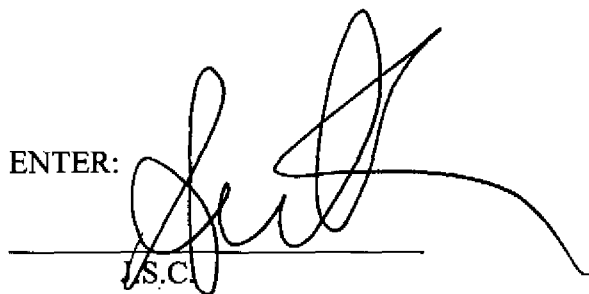
For these reasons, NTD's motion for a default judgment is denied without prejudice and with leave to refile with affidavits of service of the SATTPC and a current affidavit of merit. NTD is urged to promptly effectuate service so as to not delay the parties' contemplated global settlement efforts. It should also be noted that, as discussed with the parties at the most recent

discovery conference, any default judgment granted will be as to liability only. An inquest on damages will not occur until the conclusion of the entire action. Accordingly, it is

ORDERED that NTD Construction Corp.'s motion for a default judgment is denied without prejudice.

Dated: November 13, 2014

ENTER:

A handwritten signature in black ink, appearing to be "J.S.C.", is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.