

Greentech Capital Advisors Sec., LLC v Agri.Capital Group, S.A.
2015 NY Slip Op 30967(U)
June 5, 2015
Supreme Court, New York County
Docket Number: 652699/2014
Judge: Shirley Werner Kornreich
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: PART 54

-----X
 GREENTECH CAPITAL ADVISORS
 SECURITIES, LLC,

Index No.: 652699/2014

DECISION & ORDER

Plaintiff,

-against-

AGRI.CAPITAL GROUP, S.A.,

Defendant.

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

Plaintiff Greentech Capital Advisors Securities, LLC (Greentech) moves, pursuant to CPLR 3215, for a default judgment against defendant agri.capital Group, S.A. (agri.capital). Greentech's motion is granted, on default for the reasons that follow.

On September 4, 2014, Greentech commenced this action to recover €3,892,901.72¹ in consulting fees due under an engagement agreement it entered into with agri.capital. *See* Dkt. 2. Agri.capital, represented by Scott Berman of Friedman Kaplan Seiler & Adelman LLP, filed an answer on January 7, 2015. *See* Dkt. 8. On February 5, 2015, the parties appeared by counsel for a preliminary conference, at which a discovery schedule was set (the PC Order). *See* Dkt. 10. The PC Order required document demands to be served by February 27, 2015. *See id.* at 1.

On February 27, 2015, the parties called the court after Mr. Berman informed Greentech's counsel that agri.capital filed for bankruptcy in Luxembourg.² Mr. Berman also notified the court that he was no longer authorized to act on agri.capital's behalf. The court temporarily stayed discovery but ordered agri.capital to be represented by counsel with authority

¹ In the complaint, Greentech alleges this amount, at the then current exchange rate, is equivalent to \$5,099,701.25. Since the euro has fallen in value relative to the dollar, €3,892,901.72 is now worth approximately \$4.35 million.

² To the court's knowledge, there is no pending Chapter 15 proceeding.

to act on its behalf on a March 13, 2015 telephone conference, or else its answer would be stricken. *See* Dkt. 11. One day before the scheduled call, on March 12, 2015, Mr. Berman moved by order to show cause for leave to withdraw as agri.capital's counsel. *See* Dkt. 12. On the March 13 telephone conference, Christian Steinmetz, who is not a lawyer licensed in the United States, informed the court that he was appointed agri.capital's receiver by a Luxembourg court. Mr. Steinmetz, however, informed the court that agri.capital did not intend to appoint replacement counsel and, therefore, agri.capital did not intend to defend this action.

On March 20, 2015, Greentech cross-moved for a default judgment. *See* Dkt. 16. By order dated March 24, 2015, the court granted Mr. Berman's motion, but denied Greentech's cross-motion without prejudice. *See* Dkt. 27. The court stayed the action to provide agri.capital a final opportunity to hire replacement defense counsel. Notice was provided to agri.capital that if it did not participate by counsel on an April 29, 2015 telephone conference, Greentech may again move for a default judgment.

On April 29, 2015, Greentech's counsel called the court. No one from agri.capital did so. Thus, Greentech was given leave to move for a default judgment. *See* Dkt. 31. Greentech filed the instant motion on May 4, 2015. Agri.capital was served (*see* Dkt. 45), but did not submit opposition papers. Consequently, Greentech is granted a default judgment on liability. Pursuant to CPLR 3215 and 22 NYCRR 202.27, where, as here, a party fails to appear at a conference directed in connection with an order relieving their counsel, they should be held in default, their pleadings should be stricken, and an inquest may be ordered to determine damages. *See 60 E. 9th St. Owners Corp. v Zihenni*, 111 AD3d 511 (1st Dept 2013).

On this motion, the court cannot award damages because Greentech did not specify the amount it believes it is entitled to. Thus, an inquest on damages is referred to a Special Referee to hear and determine. In light of the contract being denominated in euros, Greentech must submit legal authority to the Referee on the proper measure of damages and computation of interest. *See GATX Corp. v Aero Jet Corporate*, 2014 WL 3585887, at *7 (SDNY 2014) (generally, “a court converts foreign currency into United States dollars at the rate prevailing on the date of the breach”, but “this rule need not be slavishly followed” if doing so is inequitable), quoting *Print A.G. v Amacoil Mach., Inc.*, 138 Misc2d 777, 784 (Sup Ct, NY County 1988). All service on agri.capital in connection with the reference shall be made in the same manner as previously authorized by the court. *See* Dkt. 45 (service by federal express on Mr. Steinmentz and agri.capital in Luxembourg and by e-mail to Mr. Steinmentz). Accordingly, it is

ORDERED that the motion by plaintiff Greentech Capital Advisors Securities, LLC for a default judgment against defendant agri.capital Group, S.A. is granted on liability only, and agri.capital’s answer is stricken; and it is further

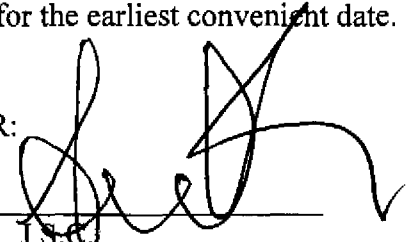
ORDERED that an inquest on damages is referred to a Special Referee to hear and determine in accordance with this decision; and it is further

ORDERED that within 15 days, plaintiff shall pay the appropriate fees and file a note of issue and shall serve a copy of this order with notice of entry, as well as a completed information

sheet,³ on the Special Referee Clerk at spref-nyef@nycourts.gov, who is directed to place this matter on the calendar of the Special Referee's part for the earliest convenient date.

Dated: June 5, 2015

ENTER:



J.S.C.

³ Copies are available in Rm. 119M at 60 Centre Street, New York, NY, and on the court's website by following the links to "Court Operations", "Courthouse Procedures", and "References".