

<b>Midtown Elec. Supply Corp. v Sage Elec. Contr., Inc.</b>
2015 NY Slip Op 31480(U)
April 27, 2015
Supreme Court, New York County
Docket Number: 650763/2009
Judge: O. Peter Sherwood
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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49**

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**MIDTOWN ELECTRIC SUPPLY CORP., COOPER  
ELECTRIC SUPPLY CO., and LIBERTY SUPPLY,  
a division of WESCO DISTRIBUTION INC., individually  
and on behalf of all others similarly situated with regard to  
that certain construction project located at 400 East 67th  
Street, New York, New York,**

**DECISION AND ORDER**

**Index No.: 650763/2009  
Mot. Seq. No. 001**

**Plaintiffs,**

**-against-**

**SAGE ELECTRICAL CONTRACTING, INC., HUNTER  
ROBERTS CONSTRUCTION GROUP, LLC, CHARLES  
NOTO and JERRY G. SARABELLA a/k/a GENE  
SARABELLA,**

**Defendants.**

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**O. PETER SHERWOOD, J.:**

Before the Court is the motion of plaintiffs Midtown Electric Supply Corp. (“Midtown”), Cooper Electric Supply Corp. (“Cooper”), and Liberty Electrical Supply, a division of WESCO Distribution (“WESCO”) for the entry of judgment in their favor and against defendants Sage Electrical Contracting, Inc. (“Sage”), Charles Noto (“Noto”) and Jerry Sarabella (“Sarabella”, and collectively with Sage and Noto, the “Sage Defendants”) pursuant to CPLR 3215. For the following reasons, the motion is granted.

Plaintiffs commenced this action by filing a verified complaint on December 21, 2009 based on Sage’s failure to pay for electrical materials that plaintiffs sold to Sage. After several years of negotiations, the parties settled the matter by Stipulation of Settlement in September 2013, and filed a stipulation of discontinuance on December 17, 2013. The Stipulation of Settlement provided that the Sage Defendants jointly and severally agreed to pay plaintiffs \$5,000 upon execution, monthly payments thereafter in the amount of \$4,000 per month from February 1, 2014 and through December 1, 2016, and a balloon payment of \$15,000 on January 1, 2017 (Stipulation of Settlement § 2[b]). In the event the Sage Defendants defaulted on these payment obligations, the Stipulation of Settlement provided for the plaintiffs to notify the Sage Defendants in writing (Stipulation of

Settlement §8[a]). In the event that the Sage Defendants failed to cure the payment default within seven business days of delivery of the notice, the Stipulation of Settlement entitled plaintiffs to entry of judgment against “Sage, Noto, and Sarabella, jointly and severally,” as follows:

(i) in favor of Midtown in the amount of \$263,000.00, less the amount of any payments received by Midtown pursuant to the terms hereof, plus interest at the rate of 9% from September 1, 2013; and (ii) in favor of Cooper in the amount of \$212,000.00, less the amount of any payments received by Cooper pursuant to the terms hereof, plus interest at the rate of 9% from September 1, 2013; and (ii) [sic] in favor of WESCO in the amount of \$19,000.00, less the amount of any payments received by WESCO pursuant to the terms hereof, plus interest at the rate of 9% from September 1, 2013

(Stipulation of Settlement § 8[b]).

CPLR 3215(i)(1) provides that

Where, after commencement of an action, a stipulation of settlement is made, providing, in the event of failure to comply with the stipulation, for entry without further notice of a judgment in a specified amount with interest, if any, from a date certain, the clerk shall enter judgment on the stipulation and an affidavit as to the failure to comply with the terms thereof, together with a complaint or a concise statement of the facts on which the claim was based.

(CPLR 3215[i][1]).<sup>1</sup> Thus, in accordance with CPLR 3215(i) and the Stipulation of Settlement, on affidavit of Todd & Levi LLP attesting that plaintiffs have defaulted, plaintiffs are entitled to judgment in the amounts specified (*see* Stipulation of Settlement § 8[b]). Plaintiffs have submitted such an affidavit from David Rosenberg, Esq. of Todd and Levi LLP, attesting that the Sage Defendants failed to make the required payments for the months of June through December 2014. Mr. Rosenberg further attests that plaintiffs sent the Sage Defendants the required Notice of Default on September 5, 2014, and again on January 5, 2015, but that the Sage Defendants failed to cure the defaults. The notices of default are attached to Mr. Rosenberg’s affidavit as exhibit “C”. The Sage Defendants have not opposed the motion. Thus, plaintiffs have established their entitlement to judgment in accordance with the Stipulation of Settlement. Because Mr. Rosenberg acknowledges that Midtown received payments in the amount of \$27,030, Cooper received payments in the amount of \$21,930, and WESCO received payments in the amount of \$2,040, the judgments against

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<sup>1</sup> Under CPLR 3215(i)(1), plaintiffs need not have made this motion, but did so in an abundance of caution.

defendants will be reduced accordingly.

Accordingly, it is hereby

**ORDERED** that plaintiffs' motion for entry of default judgment is GRANTED; and it is further

**ORDERED** that the Clerk of the Court is directed to enter judgment in favor of plaintiff MIDTOWN ELECTRIC SUPPLY CORP. and against defendants SAGE ELECTRICAL CONTRACTING, INC., CHARLES NOTO, AND JERRY SARABELLA, jointly and severally, in the sum of \$235,970.00, plus interest at the rate of 9% per annum from September 1, 2013 to March 1, 2015 in the amount of \$31,708.10, together with costs and disbursements in the amount of \$\_\_\_\_\_ as taxed by the Clerk upon submission of an appropriate bill of costs, making in all a sum total of \$\_\_\_\_\_ and that plaintiff have execution therefor; and it is further

**ORDERED** that the Clerk of the Court is directed to enter judgment in favor of plaintiff COOPER ELECTRIC SUPPLY CO. and against defendants SAGE ELECTRICAL CONTRACTING, INC., CHARLES NOTO, AND JERRY SARABELLA, jointly and severally, in the sum of \$190,070.00, plus interest at the rate of 9% per annum from September 1, 2013 to March 1, 2015 in the amount of \$25,538.20, together with costs and disbursements in the amount of \$\_\_\_\_\_ as taxed by the Clerk upon submission of an appropriate bill of costs, making in all a sum total of \$\_\_\_\_\_ and that plaintiff have execution therefor; and it is further


**ORDERED** that the Clerk of the Court is directed to enter judgment in favor of plaintiff WESCO DISTRIBUTION INC. and against defendants SAGE ELECTRICAL CONTRACTING, INC., CHARLES NOTO, AND JERRY SARABELLA, jointly and severally, in the sum of \$16,960.00, plus interest at the rate of 9% per annum from September 1, 2013 to March 1, 2015 in the amount of \$2,278.10, together with costs and disbursements in the amount of \$\_\_\_\_\_ as taxed by the Clerk upon submission of an appropriate bill of costs, making in all a sum total of \$\_\_\_\_\_ and that plaintiff have execution therefor; and it is further

**ORDERED** that, within thirty (30) days of entry, plaintiff shall serve a copy of this order with notice of entry upon defendants.

This constitutes the decision and order of the Court.

**DATED: April 27, 2014**

**ENTER,**

  
**O. PETER SHERWOOD** 4/27/15  
**J.S.C.**