

**Stagg, Terenzi, Confusione & Wabnik, LLP v Clark
Dodge Holding, LLC**

2015 NY Slip Op 33031(U)

October 26, 2015

Supreme Court, Nassau County

Docket Number: Index No. 602904/2015

Judge: Randy Sue Marber

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAUPresent: **HON. RANDY SUE MARBER**
JUSTICE

TRIAL/IAS PART 12

STAGG, TERENCE, CONFUSIONE &
WABNIK, LLP,

Plaintiff,

-against-

Index No.: 602904/15
Motion Sequence...01
Motion Date...09/24/15CLARK DODGE HOLDING, LLC, CLARK
DODGE & CO., INC., CLARK DODGE ASSET
MANAGEMENT LLC, CLARK DODGE
FINANCE, LLC, JOSEPH V. DIMAURO and
MICHAEL CLARK,

Defendants.

Papers Submitted:

Notice of Motion.....X

Upon the foregoing papers, the unopposed motion by the Plaintiff, seeking an order granting a default judgment on the Plaintiff's claims against the Defendants, CLARK DODGE HOLDING, LLC, CLARK DODGE & CO., INC. and CLARK DODGE FINANCE, LLC, pursuant to CPLR § 3215, for its failure to answer the Plaintiff's Summons and Verified Complaint or otherwise appear in the action, is decided as provided herein.

In this action, the Plaintiff is seeking to recover monetary damages as a result of the Defendants' alleged failure to pay for professional legal services rendered to it by the

Plaintiff.

The Plaintiff commenced this action by electronically filing a Summons and Verified Complaint on May 11, 2015. The defaulting Defendants were served with the Summons and Amended Verified Complaint. (*See* Affidavits of Service annexed to the Notice of Motion as Exhibits “2”, “3”, and “4”)

The Defendants, CLARK DODGE ASSET MANAGEMENT LLC, JOSEPH V. DIMAURO and MICHAEL CLARK, have appeared in this action and answers have been interposed on behalf of said Defendants by their respective attorneys.

While there is no affidavit of facts¹ submitted by the Plaintiff in support of the foregoing allegations, the Verified Complaint annexed to the Plaintiff’s moving papers has been verified by the Plaintiff, which is sufficient to establish the facts constituting the claim pursuant to CPLR § 3215.

Under CPLR § 3215, a plaintiff can make an application for a default judgment against a defendant who fails to answer or otherwise appear in the action. Pursuant to CPLR § 3215 (f), an applicant for a default judgment must provide “proof of service of the

¹The Plaintiff, a law firm representing itself, submitted an affirmation in support of the Motion as opposed to a sworn affidavit. Pursuant to CPLR § 2106, the statement of an attorney admitted to practice in the courts of this State, who is not a party to an action, when subscribed and affirmed by him to be true under the penalties of perjury, may be served or filed in the action in lieu of and with the same force and effect as an affidavit. However, those persons who are statutorily permitted to use such affirmations as opposed to an affidavit cannot do so when they are a party to an action. *Slavenburg Corp. v. Opus Apparel, Inc.*, 53 N.Y.2d 799 (1981); *See also Pisacreta v. Minniti*, 265 A.D.2d 540 (2nd Dept. 1999). In light of the foregoing, the Plaintiff’s submission of an affirmation as opposed to an affidavit was improper and its contents will be disregarded by the Court.

summons and complaint”, “proof by affidavit by the party of the facts constituting the claim” and proof of the default and/or amount due.

In the instant case, the Plaintiff’s motion has been filed within a year of the default. Moreover, copies of the Summons and Verified Complaint were served upon the Defendants, CLARK DODGE HOLDING, LLC, CLARK DODGE & CO., INC. and CLARK DODGE FINANCE, LLC, as outlined above. The affidavits of service were also subsequently e-filed with the County Clerk.

The Defendants, CLARK DODGE HOLDING, LLC, CLARK DODGE & CO., INC. and CLARK DODGE FINANCE, LLC, have failed to request any extensions of time to answer and/or otherwise appear in the action.

It appears from a review of the documentation presented that all necessary parties have been served with notice of this application, and further that the relief requested by the Plaintiff is appropriate.

Accordingly, it is hereby

ORDERED, that the unopposed motion by the Plaintiff seeking a default judgment against the Defendants, CLARK DODGE HOLDING, LLC, CLARK DODGE & CO., INC. and CLARK DODGE FINANCE, LLC, is **GRANTED**; and it is further

ORDERED, that the Plaintiff shall submit to the Judgment Clerk of the Nassau County Clerk’s Office, a money judgment in the amount of \$233,672.36, together with interest from the date of this Order, against the Defendants, CLARK DODGE HOLDING,

LLC, CLARK DODGE & CO., INC. and CLARK DODGE FINANCE, LLC; and it is further

ORDERED, that the Plaintiff's counsel shall serve a copy of this Order upon the Defendants, CLARK DODGE HOLDING, LLC, CLARK DODGE & CO., INC. and CLARK DODGE FINANCE, LLC, by regular mail to the foregoing Defendants' last known address and upon the attorneys for the appearing Defendants pursuant to CPLR § 2103 (b) (2) within ten (10) days of the date of the entry of this Order; and it is further

ORDERED, that Counsel for all parties are directed to appear for a preliminary conference before this Court on **December 2, 2015, in the Preliminary Conference Part at 9:30 A.M.**

This decision constitutes the decision and order of the Court.

DATED: Mineola, New York
October 26, 2015


Hon. Randy Sue Marber, J.S.C

HON. RANDY SUE MARBER

ENTERED

OCT 29 2015

NASSAU COUNTY
COUNTY CLERK'S OFFICE