

MCM Prods. USA, Inc. v Aliusta Design

2016 NY Slip Op 30113(U)

January 21, 2016

Supreme Court, New York County

Docket Number: 651475/2015

Judge: Eileen A. Rakower

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

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MCM PRODUCTS USA, INC.,

Plaintiff,

- v -

Index No.
651475/2015

**DECISION
and ORDER**

Mot. Seq. #005

ALIUSTA DESIGN, A&M ELECTRIC, ARCH
MILL SPECIALTIES INC., CHINATOWN
PLUMBING & HEATING INC., CERTIFIED
CUSTOM INTEGRATORS, LLC, FIVE STAR
FINISHES CORP., GRYPHON CONTRACTING
CORP., HUDSON CONCRETE POLISHING,
INC., JUST RIGHT AIR CONDITIONING
SERVICES, LITE BRITE NEON STUDIO, LLC,
NEWCO IRON WORKS, ROCKLAND
FLOORING, INC., SKYLINE GROUP CORP.,
SKYLINE SCAFFOLDING GROUP, INC.,
TOPCOAT ART, INC., TRI STATE EXQUISITE
ROOFING LLC, ULTRA CARPET, INC.,
VANQUISH CONTRACTING CORP., WARNER
CONCEPT CONSULTING INC., AND WILLIS
AVE CONSTRUCTION CORP.,

Defendants.

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HON. EILEEN A. RAKOWER, J.S.C.

Plaintiff, MCM Products USA, Inc. (“Plaintiff” or “MCM”), brings this action for a declaratory judgement, discharge of lien and release of bond, and wrongful filing of a mechanic’s lien placed on the property located at 100 Greene Street, New York, NY 10012 (the “Property”). Plaintiff claims to have leased the Property from non-party VCW Associates, pursuant to a lease agreement dated February 27, 2014 (the “Lease”), and that non-party Teliman Holding Corp. (“Teliman”) is the current owner of the Property.

Plaintiff claims to have hired non-party A.J.S. Project Management Inc. (“A.J.S.”) as general contractor on a renovation project (the “Project”) for the Property pursuant to a contract dated June 10, 2014, and that A.J.S. hired various subcontractors, with whom Plaintiff has no contractual relationship, to assist with the Project on the Property. Plaintiff claims that certain of these subcontractors, namely, defendants Aliusta Designs (“Aliusta”), Newco Iron Works (“Newco”), and Skyline Scaffolding, Inc. (“Skyline Scaffolding”), filed Mechanic’s Liens on the Property, that such Liens were not properly filed, and that any monies due and owing to defendants Aliusta, Newco, or Skyline Scaffolding in connection with the Project is due and owing from A.J.S. only.

Plaintiff commenced this action on May 1, 2015, by Summons and Verified Complaint.¹ The Complaint alleges that on March 30, 2015, MCM filed a bond discharging the Lien filed by AJS dated February 13, 2015. On April 2, 2015, MCM filed bonds discharging the liens filed by Aliusta, Newco, and Skyfold Scaffolding, dated March 11, 2015, March 4, 2015, and March 25, 2015, respectively.

In the first cause of action of the Verified Complaont, Plaintiff seeks a declaratory judgment declaring that Plaintiff is not liable to Defendants for any money due and owing between Defendants and A.J.S. regarding the Project. The second cause of action, which is directed at Aliusta, Newco, and Skyline Scaffolding, seeks to discharge the liens filed by Aliusta, Newco, and Skyline Scaffolding on the Property in connection with the Project. The third cause of action, also directed at Aliusta, Newco, and Skyline Scaffolding, alleges that the liens filed by them are invalid and that those defendants are liable for the damages caused by the wrongful filing of their liens on the Property.

¹ Defendant Hudson Concrete Polishing, Inc., interposed a Verified Answer with Cross-claims to Plaintiff’s Complaint on June 25, 2015. Newco interposed a Verified Answer with Cross-claims to Plaintiff’s Complaint on May 28, 2015. On August 4, 2015, the parties executed a Stipulation of Discontinuance as to Chinatown Plumbing & Heating Inc. On September 3, 2015, Certified Custom Integrators, LLC, interposed an Answer to Plaintiff’s Complaint with Counterclaims for unjust enrichment, accounting and pro rata distribution of trust funds, and diversion of trust funds.

Plaintiff now moves for default judgment against the following “Defendant subcontractors” or “Defaulting Defendants”:

Arch Mill Specialties Inc. (“Arch Mill”)(served on May 12, 2015 by personal service on the actual place of business, leaving Summons and Complaint with a person authorized by Arch Mill to receive service at that address);

Five Star Finishes Corp. (“Five Star”)(served on July 30, 2015 pursuant to BCL 306);

Just Right Air Conditioning & Heating, Inc. (“Just Right”) (served on July 30, 2015 pursuant to BCL 306);

Rockland Flooring, Inc. (“Rockland Flooring”)(served on May 19, 2015 by personal service on the actual place of business, leaving Summons and Complaint with a person authorized by Rockland Flooring to receive service at that address);

Skyline Scaffolding, Inc. (“Skyline Scaffolding”) (served on May 14, 2015 by personal service on the actual place of business, leaving Summons and Complaint with a person authorized by Skyline Scaffolding to receive service at that address);

Topcoat Art, Inc. (“Topcoat”) (served on July 21, 2015 by personal service on the actual place of business, leaving Summons and Complaint with a person authorized by Topcoat to receive service at that address);

Ultra Carpet, Inc. (“Ultra Carpet”) (served on July 30, 2015 pursuant to BCL 306);

Vanquish Contracting Corp. (“Vanquish”) (served on May 15, 2015 pursuant to BCL 306);

Warner Concept Consulting Inc. (“Warner”) (served on May 14, 2015 by personal service on the actual place of business, leaving Summons and Complaint with a person authorized by Warner to receive service at that address; and

Willis Ave. Construction Corp. (“Willis”) (served on July 30, 2015 pursuant to BCL 306).

Plaintiff also submits proof of additional mailing and a copy of the Verified Complaint, pursuant to CPLR § 3215(f). Specifically, in Plaintiff's motion, Plaintiff seeks "\$1,326.65, have been or will be made or incurred in this action, are reasonable in amount, and were necessary to this action: (i) \$200.00 in statutory costs pursuant to CPLR § 8201(1); and (ii) \$1,126.65 for the service of the summons and complaint on the Defaulting Defendants, pursuant to CPLR § 8301(d)."

CPLR § 3215 provides, in relevant part: "On any application for judgment by default, the applicant shall file proof . . . of the facts constituting the claim, the default and the amount due by affidavit made by the party." (CPLR § 3215[f]). Pursuant to CPLR § 3215(f), where a verified complaint has been served, a party may use the verified complaint as the "affidavit of facts constituting the claim." (CPLR § 3215[f]). As the First Department explains:

CPLR § 3215 does not contemplate that default judgments are to be rubberstamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action. The standard of proof on an application for judgment by default is not stringent, amounting only to some firsthand confirmation of the facts.

(*Feffer v. Malpeso*, 210 A.D.2d 60, 61 [1st Dep't 1994]).

Here, with respect to Plaintiff's instant motion seeking default judgment against Defaulting Defendants, with the exception of Skyline Scaffolding, the Verified Complaint, which is submitted as proof of Plaintiff's claim, does not make plead any factual allegations against the Defaulting Defendants with respect to any action taken or claim asserted by them in connection with the Project or thereafter that has affected Plaintiff. Accordingly, Plaintiff fails to meet its minimal burden of demonstrating "some firsthand confirmation" of the facts constituting Plaintiff's claims and Plaintiff's application is insufficient to support entry of a default judgment pursuant to CPLR § 3215 against those defendants. (CPLR § 3215[f]; *Martinez v. Reiner*, 104 A.D.3d 477, 478 [1st Dep't 2013]).

However, with respect to Skyline Scaffolding, the Verified Complaint alleges that on March 25, 2015, Skyline Scaffolding filed a Lien on the Property for \$7,964.38, that such Lien was not properly filed, and that any monies due and owing

to Skyline Scaffolding in connection with the Project are due and owing from A.J.S only. Accordingly, Plaintiff's application is sufficient to support entry of a default judgment as against Skyline Scaffolding.

Wherefore, it is hereby

ORDERED that Plaintiff's motion for default judgment is granted without opposition only with respect to Skyline Scaffolding; and it is further

ORDERED and ADJUDGED that Plaintiff is not liable to Skyline Scaffolding for any money due and owing between Skyline Scaffolding and A.J.S. regarding the Project; and it is further

ORDERED and ADJUDGED that the lien filed by Skyline Scaffolding is invalid and that Skyline Scaffolding is liable to Plaintiff for the damages caused by the wrongful filing of said lien; and it is further

ORDERED that an assessment of damages against Skyline Scaffolding is directed; and it is further

ORDERED that a copy of this order with notice of entry be served by the movant upon the Clerk of the Trial Support Office (Room 158), who is directed, upon the filing of a note of issue and a statement of readiness and the payment of proper fees, if any, to place this action on the appropriate trial calendar for the assessment hereinabove directed.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: JANUARY 21, 2016

JAN 21 2016



EILEEN A. RAKOWER, J.S.C.