

**Chelsea Light. NYC, LLC v IBEX Constr. Co., LLC**

2018 NY Slip Op 30180(U)

January 30, 2018

Supreme Court, New York County

Docket Number: 650775/2017

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED

PART 2

Justice

-----X

CHELSEA LIGHTING NYC, LLC
Plaintiff,

INDEX NO. 650775/2017

- v -

IBEX CONSTRUCTION COMPANY, LLC,
Defendant.

MOTION SEQ. NO. 002

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 14, 15, 16, 17, 18, 19, 20, 21, 22

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, it is ordered that the motion is granted without opposition.

This action, sounding in breach of contract and an account stated, by plaintiff Chelsea Lighting NYC, LLC, a lighting subcontractor, as against defendant IBEX Construction Company, LLC, was commenced on February 13, 2017. Ex. C. Pursuant to a contract between the parties, plaintiff allegedly sold and delivered to defendant lighting fixtures and equipment to be used at the Chapin School in New York, New York. The value of the items sold was allegedly \$449,756.56 and defendant failed to pay plaintiff \$33,244.14 of that sum.

Plaintiff alleges that defendant owes it the sum of \$33,244.14 and that it is entitled to a clerk's judgment of default against defendant in that amount, plus statutory interest from February 13, 2017, and costs and disbursements which it incurred in bringing this action.

Plaintiff previously moved for a default judgment against defendant. In its order of June 12, 2017, this Court denied plaintiff's default motion with leave to renew upon proper papers. For a more detailed recitation of the facts, see this Court's order as set forth in Doc. Nos. 13 and 22.

CPLR 3215(a) provides, in pertinent part, that “[w]hen a defendant has failed to appear, plead or proceed to trial..., the plaintiff may seek a default judgment against him.” It is well settled that “[o]n a motion for leave to enter a default judgment pursuant to CPLR 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party's default in answering or appearing.” *Atlantic Cas. Ins. Co. v R/JNJ Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011). Application for such judgment may be before the court (CPLR 3215[b]) or on application to the clerk if “for a sum certain or for a sum which can by computation be made certain.” CPLR 3215(a). However, a judgment by the clerk can only be entered “upon submission of the requisite proof.” CPLR 3215(a). This includes “proof by affidavit made by the party of the facts constituting the claim, the default and the amount due . . .” CPLR 3215(e).

In support of its motion, plaintiff submits an Affirmation in Support of Motion from Edward Weissman Esq., counsel for plaintiff (Doc. No. 16); an affidavit of Eric Martin, Chief Financial Officer and General Counsel for plaintiff (Doc. No. 15); the contract between the parties (Doc. No. 17); a statement of Accounts (Doc. No. 18); the summons and complaint (Doc. No. 19); the affidavit of service of the summons and complaint (Doc. No. 20); and a Notice of

Affidavit of Additional Mailing pursuant of the summons and complaint (Doc. No. 21); and the Affidavit of Service for the motion for default (Doc. No. 23).

Additionally, this Court finds that, upon the submission of the affidavit of Eric Martin and the affirmation of plaintiff's counsel, Weisman, and the exhibits attached, plaintiff has submitted sufficient "proof of the facts constituting the claim." CPLR 3215 (f); Plaintiff has now rectified the omissions from its initial motion.

Therefore, in accordance with the foregoing, it is hereby:

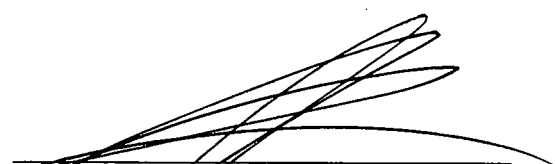
**ORDERED** that the motion by plaintiff Chelsea Lighting NYC, LLC for a default judgment against defendant IBEX Construction Company, LLC, is granted in the amount of \$33,244.14, plus interest at the statutory rate from February 13, 2017, as well as costs and disbursements; and it is further,

**ORDERED** that the Clerk is directed to enter a judgment in favor of plaintiff Chelsea Lighting NYC, LLC and against defendant IBEX Construction Company, LLC, in the amount of \$33,244.14, plus interest at the statutory rate from February 13, 2017, as well as costs and disbursements; and it is further

**ORDERED** that plaintiff Chelsea Lighting NYC, LLC shall serve a copy of this order on defendant IBEX Construction Company, LLC, and on the Trial Support Office at 60 Centre Street, Room 158; and it is further

**ORDERED** that this constitutes the decision and order of this Court

1/30/2018  
DATE

  
KATHRYN E. FREED, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	DO NOT POST	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	