

<b>Restoration Servs. LLC v Two Lizards Inc.</b>
2018 NY Slip Op 30634(U)
April 10, 2018
Supreme Court, New York County
Docket Number: 154612/2017
Judge: Kathryn E. Freed
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. KATHRYN E. FREED**

**PART 2**

*Justice*

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RESTORATION SERVICES LLC D/B/A SERVPRO OF  
OAKDALE/NORTH BAY SHORE

**INDEX NO. 154612/2017**

Plaintiff,

**MOTION DATE \_\_\_\_\_**

- v -

**MOTION SEQ. NO. 002**

TWO LIZARDS INC.,

Defendant.

**DECISION AND ORDER**

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The following e-filed documents, listed by NYSCEF document number 10, 11, 12, 13, 14, 15, 16, 17  
were read on this motion to/for JUDGMENT - DEFAULT

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

The underlying action was commenced on or about May 18, 2017 by service of the Summons and Complaint (Doc. No. 1) by plaintiff Restoration Services LLC. d/b/a Servpro of Oakdale/North Bay Shore, for breach of contract against defendant Two Lizards, Inc. Pursuant to the contract, plaintiff agreed to perform certain emergency services, including clean-up and restoration of premises owned by the defendant. Doc. No. 1.<sup>1</sup> Plaintiff alleges that it performed the work but that defendant failed to pay for the same. Doc. No. 1.

<sup>1</sup> All references are to the documents filed with NYSCEF in connection with this matter.

Plaintiff now moves, pursuant to CPLR 3215, for an order granting it a default judgment against defendant. Plaintiff, through its attorney, Harry A. Cummins, Esq., a member of the law firm of Wilkofsky, Friedman, Karel & Cummins, affirms that the summons and complaint were properly served on defendant (Doc. No 11), and that defendant's time to answer or move against the complaint has expired. Cummins further avers that, pursuant to CPLR 3215 (g) (4) (i), an additional copy of the complaint was duly mailed to defendant's last known address on July 12, 2017. Doc. No. 14. Plaintiff also submits an affidavit of merit in support of the instant motion signed by its president, David Kluger. Doc. No. 12. Kluger avers that he has read the complaint and that the facts as included in the complaint are true to the best of his knowledge. Id. He also requests that a default be granted. Id.

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 RJNJ Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011).

In its previous decision, this Court noted that, although the motion contained an affidavit of merit sworn to by Kluger, this, alone, was insufficient to establish its entitlement to a default judgment against defendant given its failure to annex the contract allegedly breached, as well as any receipts reflecting the actual work performed. Thus, the Court found that plaintiff has failed to submit sufficient “proof of the facts constituting the claim.” CPLR 3215(f); *see Manhattan Telecom Corp. v H & A Locksmith, Inc.*, 21 NY3d 200, 202 (2013), and denied plaintiff’s motion with leave to renew upon proper papers. Doc. No. 9.

In the within motion, plaintiff submits a copy of the Retainer Agreement (Doc. No. 15) and a copy of the Contract and Invoice. Doc. No. 16. Therefore, plaintiff Restoration Services LLC. d/b/a Servpro of Oakdale/North Bay Shore, with the submissions included herein, has submitted sufficient proof of the facts constituting the claim.

In light of the foregoing, it is hereby:

**ORDERED** that plaintiff Restoration Services LLC. d/b/a Servpro of Oakdale/North Bay Shore’s motion for a default judgment against defendant Two Lizards, Inc. is granted; and it is further

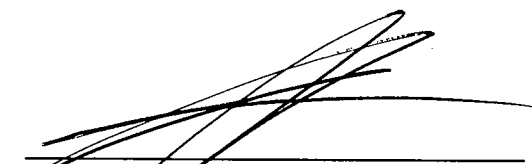
**ORDERED** that this matter is referred to a Special Referee for the purpose of conducting an inquest as to damages to be awarded to plaintiff; and it is further

**ORDERED** that within 14 days of the entry of this order on the NYSCEF system, plaintiff shall file a Note of Issue, pay the appropriate fees, and serve a copy of this order with notice of entry, as well as a completed information sheet, 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 and notify all parties of the hearing date; and it is further

**ORDERED** that, within twenty days hereof, plaintiff shall serve a copy of this order on defendant 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.

4/10/2018  
DATE

  
KATHRYN E. FREED, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	DO NOT POST	<input type="checkbox"/>	REFERENCE

APPLICATION:  DENIED

CHECK IF APPROPRIATE:  FIDUCIARY APPOINTMENT