

<b>Pirs Capital, LLC v Klein Pool Custom Builder's, Inc.</b>
2019 NY Slip Op 30009(U)
January 3, 2019
Supreme Court, New York County
Docket Number: 157336/2017
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 IAS MOTION 2
Justice
INDEX NO. 157336/2017
PIRS CAPITAL, LLC, MOTION DATE 10/11/2018
Plaintiff, MOTION SEQ. NO. 002
- v -
KLEIN POOL CUSTOM BUILDER'S, INC., GARY WILLIAMS
Defendants. DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 002) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20
were read on this motion to/for DEFAULT JUDGMENT

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

Plaintiff Pirs Capital, LLC commenced this action against defendants Klein Pool Custom Builder's, Inc. (Klein), and Gary Williams, (Williams), by filing a summons and complaint on August 16, 2017 Doc. No. 1. Subsequent to the commencement of this action, plaintiff moved the Court, and was granted, pursuant to CPLR 306-b, additional time to serve and file the summons and complaint on the defendants. Doc. No. 17. Defendant Klein was served on July 26, 2018, pursuant to CPLR 311, and Williams was served on July 26, 2018 and July 27, 2018 pursuant to CPLR 308. Doc. No. 15.

The underlying action seeks to recover for damages resulting from defendants' default and breach of a written Merchant Agreement and Security Agreement with a related personal guarantee by defendant Williams. Doc. No. 16.

All references are to the documents filed with NYSCEF in connection with this matter.

Plaintiff, through its attorney, Bryan E. Wolkind, Esq., avers that defendants were served the within motion for default pursuant to CPLR 3215, including copies of the summons and complaint (see Docs. No. 18 and 20) and that, to date, defendants have failed to answer or appear in this action and that their time to do so has expired.

Plaintiff also appends an Affidavit of Facts from Zorik Ledven, the Director of Customer Service and Retention of Plaintiff Pirs Capital, LLC, who attests to his personal knowledge of the underlying facts of defendants' indebtedness. Doc. No. 13. Ledven references the original agreement between plaintiffs and defendants (Doc. No. 16) and attests that defendants defaulted on the Agreement on or about October 6, 2015, owing the Remaining Unremitted Amount of \$56,60.08. Subsequently, defendants remitted to plaintiff the amount of \$15,750, thereby reducing the amount owed to \$40,790.08, the amount sued for herein.

Ledven, also references section 3.3 of the Agreement which provides that plaintiff is entitled to recover from defendants all expenses incurred in connection with enforcing its rights and remedies under the Agreement, including reasonable attorneys' fees.

Additionally, Ledven notes the personal guaranty that defendant Williams signed on or about August 5, 2015, wherein he agreed to unconditionally remit and guarantee the performance of Klein's obligations to plaintiff under the Agreement. Doc. No. 16, pages 3 and 4. Finally, Ledven states that demand has been made of defendants for the outstanding debt but no payment has been forthcoming.

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). Moreover, a default in answering the complaint is deemed to be an admission of all factual statements contained in the complaint and all reasonable inferences that flow from them. *See Woodson v. Mendon Leasing Corp.*, 100 N.Y.2d 63 (2003).

Plaintiff has set forth proof of the facts constituting the claim, i.e. that defendant breached Agreement, by submitting an Affidavit of Facts by Zorik Ledven, who swears to the truth and accuracy of the claims in this action.

Plaintiff has additionally submitted proof of service and compliance with CPLR 3215. Thus, plaintiff has established its entitlement to a default judgment against defendants.

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

ORDERED that the motion by plaintiff Pirs Capital, LLC against defendant Klein Pool Custom Builder's, Inc. for a default judgment for the breach of the Merchant Agreement and Security Agreement is granted; and it is further

ORDERED that the motion by plaintiff Pirs Capital, LLC against defendant Gary Williams as personal guarantor for Klein Pool Custom Builder's, Inc., for a default judgment is granted; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff Pirs Capital, LLC. and against defendants Klein Pool Custom Builder's, Inc., and Gary Williams, in the amount

of \$40,790.08, plus statutory interest from October 6, 2015, plus attorneys' fees of \$2,800.00, together with costs and disbursements to be taxed by the Clerk; and it is further,

ORDERED that plaintiff, within 20 days of the posting of this order to NYSCEF, shall serve a copy of the same, with notice of entry, on defendants; and it is further

ORDERED that this constitutes the decision and order of the court.

1/3/2019

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE

KATHRYN E. FREED, J.S.C.