

**Casur Mgt. & Maintenance, Inc. v Cardland Constr.  
LLC**

2019 NY Slip Op 30288(U)

January 24, 2019

Supreme Court, New York County

Docket Number: 159290/2018

Judge: Debra A. James

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.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM**

*Justice*

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**INDEX NO. 159290/2018**

CASUR MANAGEMENT & MAINTENANCE, INC.,

**MOTION DATE 01/29/2019**

Plaintiff,

**MOTION SEQ. NO. 001 002 003**

- v -

CARDLAND CONSTRUCTION LLC, JAMES GOMEZ, HARVEY  
BOJARSKY, 418 EAST 59TH STREET OWNERS CORP., LEWIS  
FEDER, and FIRST REPUBLIC BANK,

**DECISION AND ORDER**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 87

were read on this motion to/for JUDGMENT - DEFAULT

The following e-filed documents, listed by NYSCEF document number (Motion 002) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 62, 63, 77, 88

were read on this motion to/for JUDGMENT - DEFAULT

The following e-filed documents, listed by NYSCEF document number (Motion 003) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 78, 79, 80, 81, 82, 83, 89

were read on this motion to/for ALTERNATE SERVICE

ORDER

Upon the foregoing documents, it is

ORDERED that the motion of plaintiff made pursuant to CPLR 308(5) to permit alternate service of process upon defendant James Gomez in the form of mailing copies to Edward S. Feldman (Motion Sequence Number 003) is denied, and it is further

ORDERED that the motion of plaintiff made pursuant to CPLR 308(5) to permit alternate service of process upon defendant James Gomez upon such other means that the court finds just and

proper is GRANTED, and as plaintiff is permitted alternate service of process upon defendant James Gomez in the form of publication once a copy of the summons and complaint in the New York Daily News, within fifteen days of service of this order with notice of entry; and it is further

ORDERED that the cross motion of defendants to disqualify counsel for plaintiff (Motion Sequence Number 001) is DENIED, and it is further

ORDERED that motion of plaintiff for a default judgment against defendant Cardland Construction, LLC (Motion Sequence Number 001) is GRANTED, the action against such defendant is severed and an inquest on/assessment of damages against defendant Cardland Construction LLC 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 General Clerk's Office (60 Centre Street, Room 119), who is directed, upon the filing of a note of issue and a certificate of readiness and the payment of proper fees, if any, to place this action on the appropriate trial calendar for the assessment hereinabove directed; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page

on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)]; and it is further

ORDERED that motion of plaintiff for a default judgment against defendant Harvey Bojarsky is held in abeyance; and it is further

ORDERED that this matter having come on before this court on January 24, 2019, on motion of the plaintiff for a default judgment against defendant Harvey Bojarsky, and the plaintiff having appeared by Yosef Y. Weintraub, Esq., and the defendant Harvey Bojarsky having appeared by Edward S. Feldman, Esq., and, pursuant to CPLR 4212 the court having on its own motion determined to consider the appointment of a referee to hear and report, and it appearing to the court that an appointment is appropriate, it is now hereby

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to hear and report to this court on the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

(1) the issue of whether the address where process was delivered was the residence or business address of defendant Harvey Bojarsky; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or [spref@nycourts.gov](mailto:spref@nycourts.gov)) for placement at the earliest possible date upon the calendar of the

Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh) at the "References" link ), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s)

specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts; and it is further

ORDERED that, unless otherwise directed by this court in any Order that may be issued together with this Order of Reference to Hear and Report, the issues presented in any motion identified in the seventh paragraph hereof shall be held in abeyance pending submission of the Report of the JHO/Special Referee and the determination of this court thereon.

ORDERED that counsel are directed to appear for a preliminary conference in Room 331, 60 Centre Street, on May 7, 2019, at 9:30 AM.

#### DECISION

Defendants have not met the heavy burden they bear on their cross motion seeking to disqualify plaintiff's attorney. They have not shown that matters upon which plaintiff's counsel allegedly gave legal advice to defendant Bojarksy, some two-and one-half years before the agreement that is the basis of the action at bar was entered into, were substantially related to such agreement or this action, let alone that any information

that plaintiff's counsel obtained in such consultation "could be significantly harmful" to him in this action. See Meyers v Stone Castle Partners, LLC, 126 AD3d 58 (1st Dept. 2015).

As to plaintiff's motion to serve defendant Gomez by delivering process to defense counsel, the denial of defense counsel that he is either the attorney for defendant Gomez or agent for service militates against such alternative means of service. Given that the process has been served via service on the Secretary of State upon the defendant corporation, of which defendant Gomez is allegedly a member, the court finds that service upon defendant Gomez by publication of such process in a local newspaper of record would be a just and proper alternative method. See Dobkin v Chapman, 21 NY2d 490 (1968).

Defendant Cardland Construction LLC has not put forth any reasonable excuse for its failure to answer or appear timely in this action. Having prima facie established its entitlement to a judgement by default, plaintiff shall be awarded such relief. See Gourvitch v 92nd and 3rd Rest. Corp., 146 AD3d 431 (1st Dept.

1/24/2019

DATE

  
DEBRA A. JAMES, J.S.C.

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

2017).