

PIRS Capital, LLC v Salisbury Sales, Inc.
2019 NY Slip Op 30785(U)
March 27, 2019
Supreme Court, New York County
Docket Number: 157650/2018
Judge: Joel M. Cohen
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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. JOEL M. COHEN PART IAS MOTION 3EFM

Justice

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PIRS CAPITAL, LLC,

Plaintiff,

- v -

SALISBURY SALES, INC., DAVID MISSLE

Defendant.

INDEX NO. 157650/2018

MOTION DATE 11/26/2018

MOTION SEQ. NO. 001

**AMENDED DECISION AND
ORDER**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13

were read on this motion for JUDGMENT - DEFAULT.

Upon the foregoing documents:

Plaintiff PIRS Capital, LLC moves for a default judgment pursuant to CPLR §3215 against Defendants Salisbury Sales, Inc. d/b/a SSI Custom Apparel and David S. Missle for failure to appear, answer, or otherwise move with respect to the complaint. For the reasons described below, the motion for default judgment is granted.

Defendants have failed to appear, answer or otherwise move in this action. Nor did they submit opposition to the instant motion for a default judgment.

Plaintiff has submitted un rebutted evidence demonstrating compliance with the requirements of CPLR §3215. Therefore, Plaintiff’s motion for default judgment is granted as to liability. The relief sought in the complaint is for a sum certain of \$40,600.27 with interest at the statutory rate of 9% from August 8, 2018. As such, Plaintiff’s motion for default judgment is granted as to damages.

Plaintiff also seeks expenses incurred in connection with its enforcement of its rights and attorneys' fees. Claims for attorneys' fees "are not ordinarily amenable to characterization as claims for 'sums certain.'" *Arent Fox Kintner Plotkin & Kahn v. Lurzer GmbH*, 297 A.D.2d 590 (1st Dep't 2002); *Reynolds Secs. v. Underwriters Bank & Trust Co.*, 44 N.Y.2d 568 at 572 (1978) (holding that to be considered a "sum certain" there can be no dispute as to the amount due). Plaintiff shall be directed to an Inquest to determine the issue of expenses and attorneys' fees.

Defendants may seek a vacatur of the instant default judgment if they can satisfy the requirements of CPLR §5015, CPLR §317, or any other relevant law.

Therefore it is:

ORDERED that Plaintiff's Motion for a Default Judgment against Defendants is Granted, and the Clerk of the Court is directed to enter a judgment in favor of Plaintiff and against Defendant for the amount alleged in the complaint, \$40,600.27, with interest at the statutory rate of 9% from August 8, 2018, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED Plaintiff's request for expenses and attorneys' fees is referred to a JHO to hear and determine; and it is further

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to determine the expenses and attorneys' fees owed to Plaintiff; and it is further

ORDERED that the powers of the JHO/Special Referee to determine shall not be limited further than as set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119 M, 646-386-3028 or spref@courts.state.ny.us) 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/suptmanh at the "Local Rules" link), shall assign this matter to an available Special Referee to determine as specified above; and it is further

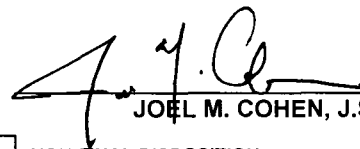
ORDERED that plaintiff's counsel shall serve a copy of this order with notice of entry on defendants within five days and that counsel for plaintiff shall, after thirty days from service of those papers, submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (which can be accessed at <http://www.nycourts.gov/courts/ljd/suptmanh/refpart-infosheet-10-09.pdf>) 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 hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR § 4318) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and that the parties shall appear for the reference hearing, including with all such witnesses and evidence as they may seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referee's 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 specified above shall proceed from day to day until completion.

This constitutes the Decision and Order of the Court.

3/27/2019
DATE


JOEL M. COHEN, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED SETTLE ORDER SUBMIT ORDER OTHER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE