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| <b>USA Battery, LLC v UPS Power Mgt., Inc.</b>   |
| 2019 NY Slip Op 30871(U)   |
| March 18, 2019   |
| Supreme Court, New York County   |
| Docket Number: 652141/2018   |
| 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*

-----X  
USA BATTERY, LLC DBA BRIDGEVIEW POWER,  
Plaintiff,  
- v -  
MOTION DATE 01/16/2019  
MOTION SEQ. NO. 001

UPS POWER MANAGEMENT, INC., SUPERIOR BATTERY,  
INC., JIN ZHENG  
Defendants.

**DECISION AND ORDER**

-----X  
The following e-filed documents, listed by NYSCEF document number (Motion 001) 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33  
were read on this motion for DEFAULT JUDGMENT.

Upon the foregoing documents:

Plaintiff USA Battery, LLC, d/b/a Bridgeview Power, moves for a default judgment pursuant to CPLR § 3215 against Defendants UPS Power Management, Inc., Superior Battery Inc., and Jin Zheng, 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 Defendants 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 \$48,271.20, with contractual interest at the rate of 1.5% per month from March 14, 2018. As such, Plaintiff’s motion for default judgment is granted as to damages.

Plaintiff also seeks 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). Therefore, because attorneys' fees are not treated by courts as a sum certain, Plaintiff shall be directed to an Inquest to determine the issue of attorneys' fees.

Defendant may seek a vacatur of the instant default judgment if it 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 Defendant is Granted, and the Clerk of the Court is directed to enter a judgment in favor of Plaintiff and against Defendants for the amount alleged in the complaint, \$48,271.20, with contractual interest at the rate of 1.5% per month from March 14, 2018, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; it is further

**ORDERED** Plaintiff's request for 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 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](mailto: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/supctmanh](http://www.nycourts.gov/supctmanh) 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 defendant 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/suptctmanh/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.

[CONTINUED FROM PREVIOUS PAGE]

03/18/2019  
DATE

  
JOEL M. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER  
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: