

International Drilling Equip., Inc. v Empire Pile & Found., Inc.

2019 NY Slip Op 32082(U)

July 17, 2019

Supreme Court, New York County

Docket Number: 650920/2018

Judge: Barry Ostrager

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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. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

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INDEX NO. 650920/2018

INTERNATIONAL DRILLING EQUIPMENT, INC.,

MOTION DATE 06/28/2019

Plaintiff,

MOTION SEQ. NO. 004

- v -

EMPIRE PILE & FOUNDATIONS, INC., d/b/a EMPIRE
EQUIPMENT CORPORATION, d/b/a MILL CREEK
CONSTRUCTION CORP.,

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 54, 55, 56,
57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 77, 78 and 79

were read on this motion to/for JUDGMENT - DEFAULT

OSTRAGER, BARRY R., J.S.C.:

Plaintiff International Drilling Equipment, Inc. ("IDE") moves herein for a default
judgment against defendant Empire Pile & Foundations, Inc. ("Empire") on its First Amended
Complaint (NYSCEF Doc. No. 50). In the Amended Complaint, IDE alleges that Empire
breached the written Equipment Lease Purchase Agreement between the parties relating to a
particular Hydraulic Piling Rig ("the Agreement", NYSCEF Doc. No. 2) by disabling the GPS,
bringing the Rig to a different jobsite, and failing to pay rent when due. IDE further claims that
Empire breached an additional contract by failing to pay sales tax.

IDE terminated the Agreement, commenced this action in February 2018, and exercised
its right to seize the Rig in March 2018 when Empire was represented by counsel (NYSCEF
Doc. No. 16). Thereafter, by decision and order dated January 29, 2019, the Court granted the
law firm of Rivkin Radler LLP permission to withdraw as counsel for Empire (NYSCEF Doc.

No. 37). Empire has not retained new counsel, despite ample time provided by the Court. Because a corporation is required by CPLR §321(a) to appear by counsel, Empire is in default, and IDE is moving herein for a default judgment in its favor. IDE served the moving papers by Federal Express to Empire's last known address on June 3, 2019 (NYSCEF Doc. No. 77), and Empire has failed to respond.

In support of its motion, IDE presents the Affidavit of Stephen Gazo, President of International Drilling Equipment, Inc., based on personal knowledge acquired during the course of his employment. (NYSCEF Doc. No. 65). Gazo confirms the authenticity of the Agreement at issue executed by the parties on March 16, 2017 (NYSCEF Doc. No. 66) and summarizes the material terms and conditions. Attached to the Amended Complaint is a letter from counsel dated January 12, 2018 detailing the unpaid invoices, and Gazo also discusses the invoices and provides copies. At the request of the Court, plaintiff filed a Supplemental Affidavit from John D. Matulia, Operations Coordinator of IDE, confirming the precise amount of rent allegedly due for the equipment, without interest, as of March 15, 2018 when IDE picked up the equipment (NYSCEF Doc. No. 79).

IDE asserts that as of May 20, 2018, Empire owed \$134,469.62 for rental payments through the March 15 date when the equipment was surrendered, taking into account a credit of \$31,5000 recovered from a third-party whose property had allegedly been improved through the defendant's use of the Rig at their site. (NYSCEF Doc. No. 78). An invoice dated March 15, 2018 reflects charges of \$19,801.79 in connection with the recovery of the equipment (NYSCEF Doc. No. 71), and another invoice dated May 14, 2018 demands \$134,275.98 for charges incurred for the inspection and repair of the Rig after recovery (NYSCEF Doc. No. 72), for a

total of \$154,077.77 for additional charges beyond the basic rent (NYSCEF Doc. No. 78). Sales tax was invoiced on July 11, 2018 in the amount of \$26,737.06 in connection with the transaction under the Agreement (NYSCEF Doc. No. 73). Sales tax for Additional Contracts between the parties totaled \$67,610.68 (NYSCEF Doc. No. 78).

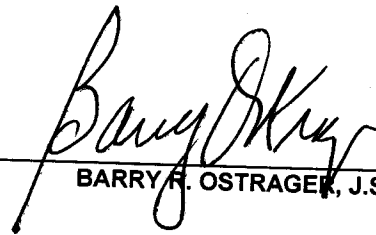
The various affidavits from IDE representatives, along with the attached documentation and the affirmation of counsel, establish IDE's right to a default judgment against Empire in the principal amount of \$134,469.62 for rent, plus \$19,801.79 for recovery costs, plus \$134,275.98 for inspection and repair costs, plus \$26,737.06 for sales tax under the Agreement, plus \$67,610.68 for sales tax for additional contracts for a total principal amount of \$382,895.13. IDE is entitled to interest on the total principal amount at the contractual rate of 18% per annum from the intermediate date of May 15, 2018, as calculated by the Clerk of the Court. Plaintiff has also established its right to attorneys' fees pursuant to ¶11 of the Terms and Conditions of the parties' Agreement. Based on the invoices provided with the moving papers and the Affirmation from counsel, the Court finds that \$60,000.00 is a reasonable amount for services rendered in this case in light of the rather extended litigation to date.

Accordingly, it is hereby

ORDERED that the plaintiff's motion for summary judgment on the complaint herein is granted on default, and the Clerk of the Court is directed to enter judgment in favor of plaintiff International Drilling Equipment, Inc. and against defendant Empire Pile & Foundations, Inc., d/b/a Empire Equipment Corporation, d/b/a Mill Creek Construction Corp., in the sum of \$382,895.13, with interest at the rate of 18% per annum from the date of May 15, 2018 until the date of the entry of judgment, as calculated by the Clerk, and thereafter at the statutory rate, together with costs and disbursements as taxed by the Clerk upon submission of a Proposed

Judgment and an appropriate Bill of Costs, as well as an affidavit confirming service of those documents and this decision on defendant at the last known address. Additionally, the Court awards IDE \$60,000 in attorney's fees based on the Affirmation from counsel and the invoices for services rendered. The Judgment shall include the award of attorneys' fees; however, plaintiff is not entitled to pre-judgment interest for an award of attorney's fees.

7/17/2019
DATE


BARRY R. OSTRAGER, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE