

JDS Dev. LLC v Parkside Constr. Bldrs. Corp.

2020 NY Slip Op 30745(U)

March 9, 2020

Supreme Court, New York County

Docket Number: 655477/2018

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 48EFM

-----X
JDS DEVELOPMENT LLC D/B/A JDS DEVELOPMENT
GROUP, JDS CONSTRUCTION GROUP LLC

INDEX NO. 655477/2018

Plaintiff,

MOTION DATE _____

- v -

MOTION SEQ. NO. 005

PARKSIDE CONSTRUCTION BUILDERS CORP., ALLIED
WORLD INSURANCE COMPANY,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 005).231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 256

were read on this motion to/for JUDGMENT - DEFAULT

In motion sequence number 005, plaintiff moves, pursuant to CPLR 3215 (d), for a default judgment against defendant Parkside Construction Builders Corp. (Parkside) for failure to appear in this action and defend plaintiff's claim for breach of contract. To date, Parkside has not answered, responded, or otherwise appeared. This motion is unopposed.

“On a motion for a default judgment under CPLR 3215 based upon a failure to answer the complaint, a plaintiff demonstrates entitlement to a default judgment against a defendant by submitting: (1) proof of service of the summons and complaint; (2) proof of the facts constituting its claim; and (3) proof of the defendant's default in answering or appearing” (*Medina v Sheng Hui Realty LLC*, 2018 WL 2136441, *6-7 [Sup Ct, NY County 2018] [citations omitted]).

“CPLR 3215 (f) requires that an applicant for a default judgment file proof by affidavit made by the [moving] party of the facts constituting the claim” (*see Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70 [2003]).

Plaintiff has met its burden. In support of this motion, plaintiff provides proof of service of the summons and complaint upon the New York State Secretary of State, the appointed agent for service of process for Parkside, a registered New York Corporation (NYSCEF Doc. No. [NYSCEF] 234), as well as proof of an additional mailing pursuant to CPLR 3215 (g) (4) to the last known address of Parkside (NYSCEF 236). Plaintiff adequately states a viable cause of action for breach of contract against Parkside, and proof of the facts constituting that claim are set forth in the affidavit of Michael Stern, plaintiff's founder and managing partner (NYSCEF 237), and the exhibits annexed to his affidavit (NYSCEF 238-241). Further, plaintiff's attorney asserts that Parkside has not appeared or responded to the complaint (NYSCEF 232).

"To state a claim for breach of contract, a plaintiff must assert (1) the existence of a contract, (2) the plaintiff's performance under the contract, (3) the defendant's breach of the contract, and (4) resulting damages" (*US Bank Nat. Assn. v Lieberman*, 98 AD3d 422, 423 [1st Dept 2012] [citation omitted]). Plaintiff submits contract it entered into with Parkside (NYSCEF 238) to show the existence of a contract. Plaintiff sufficiently demonstrates that it performed its obligations under the contract by paying Parkside all payments required until Parkside breached and that Parkside failed to perform under the contract in so far as Parkside failed to pay subcontractors and failed to perform all work required under the contract. Finally, plaintiff sufficiently demonstrates that it suffered damages as a result of this breach.

Thus, the motion for a default judgment is granted, in part, and a hearing on damages will be set before a referee.

Accordingly, it is

ORDERED that plaintiff's motion for a default judgment against Parkside Construction Builders Corp. is granted in part and an assessment of damages against defendant Parkside Construction Builders Corp. is directed; and it is further

ORDERED that the issue of damages owed to plaintiff, if any, by defendant Parkside Construction Builders Corp. is referred to a Judicial Hearing Officer (JHO) or Special Referee to hear and report, unless the parties stipulate to have the JHO or Special Referee hear and determine as permitted by CPLR 4317; 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) 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 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 plaintiff's counsel 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 counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by

filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules); 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.

3/9/2020
DATE


ANDREA MASLEY, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED DENIED
- SETTLE ORDER
- INCLUDES TRANSFER/REASSIGN

- NON-FINAL DISPOSITION
- GRANTED IN PART OTHER
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: