

Crystal Spoon Corp. v Chefs Diet Acquisition Corp.
2020 NY Slip Op 30750(U)
March 11, 2020
Supreme Court, New York County
Docket Number: 152659/2015
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

-----X

THE CRYSTAL SPOON CORP.

Plaintiff,

- v -

CHEFS DIET ACQUISITION CORP.,

Defendant.

-----X

INDEX NO. 152659/2015

MOTION DATE 01/30/2020

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26, 27

were read on this motion to/for JUDGMENT - DEFAULT

Reference is made to a certain Food Production Agreement (the Agreement), dated November 19, 2013, by and between The Crystal Spoon Corp. (Crystal Spoon) and Chef's Diet Acquisition Corp. (Chef's Diet) (NYSCEF Doc. No. 2 at 1). Pursuant to the Agreement, Chef's Diet engaged Crystal Spoon to produce meals and snacks for Chef's Diet's customers in accordance with Chef's Diet's Balanced Dietary Formulation Fresh Meal Program (id.). Paragraph 13 (c) of the Agreement provides that Crystal Spoon and Chef's Diet agree to submit to the personal jurisdiction and venue of the state or federal courts located in New York for resolution of all disputes arising out of the Agreement (id., ¶ 13 [c]). Crystal Spoon provided meals and snacks as required under the Agreement, but beginning in 2015, Chef's Diet fell behind in paying its invoices. Crystal Spoon commenced this action for, inter alia, breach of contract, seeking to recover \$166,388.36 in unpaid invoices and additional compensation for wrongful termination of the Agreement.

Chef's Diet failed to file answer, move, or otherwise appear in this action. Crystal Spoon moved for default judgment pursuant to CPLR § 3215. By decision and order dated October 8, 2015, the court (Kern, J.) denied the motion on the ground that Crystal Spoon failed to submit an affidavit by someone with personal knowledge of the facts constituting its claims against Chef's Diet (NYSCEF Doc. No. 14).

A status conference was scheduled in this matter for October 10, 2019. Chef's Diet failed to appear for the conference. The court issued an order directing that Crystal Spoon "may move for all appropriate relief" (NYSCEF Doc. No. 19). Both parties failed to appear at the next status conference on December 2, 2019, and the court adjourned the conference to December 9, 2019. Chef's Diet failed to appear at the conference on December 9, 2019. The court issued an order stating: "Plaintiff to move for default judgment by 12/20/2019" (NYSCEF Doc. No. 21). Crystal Spoon filed the instant motion for default judgment on December 20, 2019.

A party may move for default judgment pursuant to CPLR § 3215 "[w]hen a defendant has failed to appear, plead or proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed" (CPLR § 3215 [a]). A party in default is "deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them" (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]).

A party moving for default judgment must file (i) proof of service of the summons and complaint, (ii) proof of the facts constituting the claim, and (iii) proof of the default and the amount due (CPLR § 3215 [f]). Even when a motion for default judgment is unopposed, the

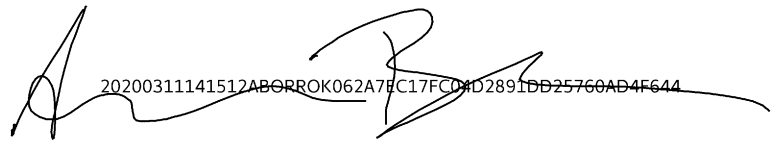
motion will only be granted if the movant has satisfied the requirements of CPLR § 3215 (*Crane, A.G. v 206 W. 41st St. Hotel Assoc., L.P.*, 87 AD3d 174, 180 [1st Dept 2011]).

Here, Crystal Spoon submits proof of proper service of the summons and complaint (NYSCEF Doc. No. 25, 26), proof the facts constituting the claim, including an affidavit by Paul Ghiron, the President of Crystal Spoon, who has personal knowledge of the facts and circumstances constituting its claims against Chef's Diet (NYSCEF Doc. No. 23) and copies of the relevant invoices (NYSCEF Doc. No. 3, 4), and an attorney affirmation of Ethan Leonard, Esq., counsel to Crystal Spoon (NYSCEF Doc. No. 27). Based on the foregoing, Crystal Spoon has established its entitlement to a default judgment in favor of Crystal Spoon and against Chef's Diet pursuant to CPLR § 3215.

Accordingly, it is

ORDERED that the Crystal Spoon Corp.'s motion for default judgment against Chef's Diet Acquisition Corp. is granted as unopposed pursuant to CPLR § 3215; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Crystal Spoon Corp. and against Chef's Diet Acquisition Corp. in the amount of \$166,388.36, plus interest at the rate of 9% per annum from March 9, 2015, together with costs and disbursements as allocated by the Clerk, and the plaintiff shall have execution thereof.



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3/11/2020

DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED DENIED

GRANTED IN PART OTHER

APPLICATION: SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE