

**Board of Trustees of the N.Y. City Dist. Council of
Carpenters Pension Fund v Excellence Flooring LLC**

2020 NY Slip Op 31111(U)

April 30, 2020

Supreme Court, New York County

Docket Number: 162140/2019

Judge: Kathryn E. Freed

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. KATHRYN E. FREED **PART** **IAS MOTION 2EFM**

Justice

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INDEX NO. 162140/2019

THE BOARD OF TRUSTEES OF THE NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS PENSION FUND, NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS WELFARE FUND INCLUDING VACATION BENEFITS, NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS ANNUITY FUND, NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS APPRENTICESHIP, JOURNEYMAN RETRAINING, EDUCATIONAL AND INDUSTRY FUND, THE NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS CHARITY FUND

MOTION SEQ. NO. 001

Plaintiffs,

DECISION + ORDER ON MOTION

- v -

EXCELLENCE FLOORING LLC and JEANETTE VALLE,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 7 were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT.

Plaintiffs The Board of Trustees of the New York City District Council of Carpenters Pension Fund, New York City District Council of Carpenters Welfare Fund Including Vacation Benefits, New York City District Council of Carpenters Annuity Fund, New York City District Council of Carpenters Apprenticeship, Journeyman Retraining, Educational and Industry Fund, and The New York City District Council of Carpenters Charity Fund move: 1) pursuant to CPLR 3213, for summary judgment in lieu of complaint on a judgment in the amount of \$301,683.15 entered against defendants Excellence Flooring LLC and Jeanette Valle in this Court

in 2010; and 2) pursuant to CPLR 5014, to renew the 2010 judgment. After a review of plaintiffs' contentions, as well as a review of the relevant statutes and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND:

On February 17, 2010, this Court entered a judgment by confession against defendants in the matter of *The Board of Trustees of the New York City District Council of Carpenters Pension Fund, New York City District Council of Carpenters Welfare Fund Including Vacation Benefits, New York City District Council of Carpenters Annuity Fund, New York City District Council of Carpenters Apprenticeship, Journeyman Retraining, Educational and Industry Fund, and The New York City District Council of Carpenters Charity Fund v Excellence Flooring LLC and Jeanette Valle*, Supreme Court, New York County Index Number 161020/92. Doc. 4. The judgment was in the amount of \$301,683.15. Doc. 4.

Plaintiffs now move, pursuant to CPLR 3213, for summary judgment in lieu of complaint, as well as pursuant to CPLR 5014, seeking to renew the 2010 judgment for ten years. In support of the motion, plaintiffs submit an affidavit of service of the summons and the motion, a copy of the entered judgment, and the affirmation of Nicole Marimon, Esq., attorney for plaintiff. Doc. 3. Although there are certain statements annexed as an exhibit to the motion, they are not authenticated and

Marimon does not explain their significance. In her affirmation, Marimon represents, inter alia, that defendants have only paid \$15,000 towards the judgment and thus owe plaintiffs \$286,683.15. Doc. 3. Marimon also states that the motion is timely since it was filed during the one year preceding the expiration of the ten year anniversary of the docketing of the judgment. Doc. 3.

CONCLUSIONS OF LAW:

A New York money judgment is enforceable for 20 years. See CPLR 211(b). A judgment creditor is permitted to commence an action to renew the judgment pursuant to CPLR 5014 "where [10] years have elapsed since the judgment was originally docketed." *Pangburn v Klug*, 244 AD2d 394, 395, 664 N.Y.S.2d 71 (2d Dept 1997). Such action must be commenced "during the year prior to the expiration of ten years since the first docketing of the judgment." CPLR 5014. Additionally, plaintiffs must establish the existence of the prior judgment, that defendants were the judgment debtors, that the judgment was docketed at least nine years ago, and that the judgment remains totally or partially unsatisfied. *See Rose v Gulizia*, 104 AD3d 757, 758 (2d Dept 2013). Here, plaintiffs establish the existence of the judgment, that the judgment was filed in 2010, and that they are the judgment debtors. However, although they concede that defendants have paid \$15,000 towards the judgment, and that they are thus entitled to renew the judgment in the

amount of \$286,683.15, this representation is made by their attorney, Marimon, who does not state that she has personal knowledge of the facts. Therefore, the judgment cannot be renewed based on plaintiffs' papers.

Similarly, plaintiffs are not entitled to summary judgment in lieu of complaint. Although a motion for summary judgment in lieu of complaint may be made where an action is based upon a judgment (*see Lawrence v Kennedy*, 95 AD3d 955, 957 [2d Dept 2012]), it is governed by the same standards as a motion for summary judgment brought pursuant to CPLR 3212. *See Gateway State Bank v Shangri-La Private Club for Women, Inc.*, 113 AD2d 791 (2d Dept 1985). It is well settled that the burden is on the moving party to make a prima facie showing that it is entitled to summary judgment as a matter of law. *See Zuckerman v City of New York*, 49 NY2d 557, 562 (1980). Since Marimon neither represents that she has personal knowledge regarding the facts of this matter nor submits any documentary proof in admissible form regarding defendants' failure to pay plaintiffs the amount of the judgment, the supporting papers annexed to plaintiffs' motion do not "contain proof of the essentials of the plaintiff's cause of action." *Mercantile Bank of Chicago v Wismer*, 48 Misc2d 275 (1st Dept 1965).

Therefore, in light of the foregoing, it is hereby:

ORDERED that the branch of plaintiffs' motion for summary judgment in lieu of complaint is denied, without prejudice, and the action is dismissed with leave to refile upon proper papers; and it is further

ORDERED that the branch of plaintiff's motion seeking to renew the judgment of February 17, 2010 is denied without prejudice to renew the application upon proper papers in a subsequent action to be filed by plaintiffs, should they be so advised; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly; and it is further

ORDERED that this constitutes the decision and order of the court.

4/30/2020

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE

KATHRYN E. FREED, J.S.C.