

**C&L Consultants LTD v Primesource
Equity Solutions LLC**

2020 NY Slip Op 31306(U)

April 23, 2020

Supreme Court, New York County

Docket Number: 652513/2019

Judge: Jennifer G. Schechter

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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. JENNIFER G. SCHECTER **PART** **IAS MOTION 54EFM**

Justice

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C&L CONSULTANTS LTD,

Plaintiff,

- v -

PRIMESOURCE EQUITY SOULUTIONS LLC, BRIDGE
LIGHT FUNDING, LLC, ELI BRIGGS,

Defendants.

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MOTION DATE _____

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 1-19
were read on this motion to/for JUDGMENT - DEFAULT.

Plaintiff C&L Consultants Ltd. moves, pursuant to CPLR 3215, for a default judgment against defendant Primesource Equity Solutions, LLC (Prime) on the issue of liability as to the first cause of action for breach of contract. The motion is granted.

This case arises from a contract dated August 10, 2017 and styled “Memorandum of Agreement” between plaintiff and Prime, a New York LLC (Dkt. 17 [Agreement]). Pursuant to the Agreement, plaintiff was to pay \$120,000 to David Feltman, Esq., denoted as “Attorney and Paymaster” for non-signatory Bridge Light Funding Ltd. (Bridge Light), who was then to transfer the balance (less fees) to an account for Prime’s benefit. Thereafter, Prime was to arrange for plaintiff to acquire a \$50 million Standby Letter of Credit (SBLC) within three to five days and deliver to plaintiff a \$5 million cash instrument (less fees), drawn against the SBLC, within ten “banking days.” Paragraph 15 of the Agreement entitles plaintiff to a full refund (less \$70 wire fees under specific circumstances) should Prime fail to deliver the \$5 million. Paragraph 19 entitles the prevailing party to recover its court costs and attorneys’ fees.

Plaintiff commenced this action by summons and complaint on April 30, 2019. On September 3, 2019, Prime was served with process by way of the Secretary of State of the State of New York, pursuant to CPLR 311-a and § 303 of the Limited Liability Company Law (Dkt. 5 at 3 [affidavit of service]). On July 19, 2019, plaintiff's counsel made an additional mailing of the summons and complaint as required by CPLR 3215(g) (Dkt. 9 [affidavit of mailing]). On October 7, 2019, plaintiff moved for a default judgment against Prime. The court denied the motion for failure to attach a copy of the Agreement (Dkt. 12 [decision and order]). On November 15, 2019, plaintiff again moved for a default judgment, this time attaching a copy of the Agreement. The motion papers were mailed to Prime on November 14, 2019 (Dkt. 19 [affidavit of mailing]). Prime never appeared.

In support of its motion, plaintiff submits a copy of the agreement, proof of service of process and an affidavit of merit by Christian Otta (Dkt. 18 [Otta Affidavit]), sole shareholder and officer of plaintiff. Otta attests that Bridge Light introduced plaintiff to Prime and Eli Briggs (allegedly a principal of Prime), and that plaintiff planned to use the proceeds of the Agreement for capital expansion. Otta further attests that plaintiff fully performed under the Agreement by wiring \$120,100 to non-party Feltman, an attorney for Prime. The \$5 million cash instrument was never delivered to plaintiff. Nor did plaintiff receive a refund, despite repeated demands. Since March 19, 2018, plaintiff received no updates regarding the transaction.

To succeed on a motion for a default judgment, the plaintiff must submit proof of service of process and affidavits attesting to the default and the facts constituting the claim (CPLR 3215[a]). “The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts” (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]; see *Whittemore v Yeo*, 117 AD3d 544, 545 [1st Dept 2014]). A defaulting defendant “admits all traversable allegations

in the complaint, including the basic allegation of liability” (*Rokina Optical Co. v Camera King, Inc.*, 63 NY2d 728, 730 [1984]; *see Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003] [“defaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them”]). The defaulting defendant does not, however, admit the plaintiff’s conclusion as to damages (*see Rokina*, 63 NY2d at 730; CPLR 3215).

Plaintiff carried its burden, on this motion for a default judgment, to prove Prime’s liability for breach of the Agreement. The court will refer the requested damages inquest to a Special Referee. Accordingly, it is

ORDERED that plaintiff’s motion for a default judgment is granted as to liability on its first cause of action for breach of contract against defendant Primesource Equity Solutions, LLC; and it is further

ORDERED that a Judicial Hearing Officer (“JHO”) or Special Referee shall be designated to hear and report to this court, or, if all appearing parties consent, to hear and determine, on the issue of the damages, including attorneys’ fees, caused to plaintiff by the breach of contract by defendant Primesource Equity Solutions, LLC, which are hereby submitted to the JHO/Special Referee for such purpose; 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 counsel for plaintiff shall, within 15 days of resumption of e-filing in non-essential matters on NYSCEF, 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

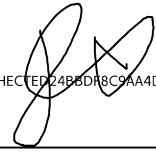
ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees 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(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; 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; and it is further

ORDERED that within 10 days of resumption of e-filing in non-essential matters on NYSCEF, plaintiff shall serve a copy of this order with notice of entry on defendants and on David Feltman, Esq., 56 Carlyle Lane, Buffalo Grove, IL 60089,* by overnight mail.

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JENNIFER G. SCHECTER, J.S.C.

4/23/2020
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
			<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input checked="" type="checkbox"/>	REFERENCE

* The record is silent on whether Prime’s purported attorney, to whom plaintiff reportedly remitted \$120,100, was ever notified of this suit.