

**American Empire Surplus Lines Ins. Co. v Brenmac  
Constr. Corp.**

2020 NY Slip Op 32830(U)

August 21, 2020

Supreme Court, New York County

Docket Number: 651263/2019

Judge: Louis L. Nock

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

**PRESENT:** HON. LOUIS L. NOCK **PART** **IAS MOTION 38EFM**

*Justice*

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AMERICAN EMPIRE SURPLUS LINES INSURANCE  
COMPANY,

Plaintiff,

**INDEX NO.** 651263/2019

**MOTION DATE** 12/18/2019

**MOTION SEQ. NO.** 002

- v -

BRENNAC CONSTRUCTION CORP., DOMINGO  
HENRIQUEZ, and 425 HEIGHTS TENANTS CORP.,

Defendants.

**DECISION, ORDER, AND  
JUDGMENT**

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

were read on this motion to/for

JUDGMENT - DEFAULT

Upon the foregoing documents, the motion of plaintiff American Empire Surplus Lines Insurance Company (“Plaintiff”) for entry of a default judgment against Defendant Brenmac Construction Corp. (“Defendant”) is granted without opposition, in accord with the following memorandum decision.

Plaintiff is an insurance company that issued a Commercial General Liability insurance policy to Defendant, bearing Policy No. 17CG0211399, for the period April 12, 2017 to April 12, 2018 (the “Policy”). Following an audit, Plaintiff determined that an additional insurance premium in the amount of \$75,404.00 was owed by Defendant pursuant to the terms of the Policy. Defendant failed to timely remit payment of the additional premium and Plaintiff commenced this action to recover the sum owed. Defendants Domingo Henriquez and 425 Heights Tenants Corp. are named as additional defendants in this action only to the extent that

their interests may be affected by the outcome of the case (complaint ¶ 5),<sup>1</sup> and Plaintiff is not seeking judgment against them by this motion. Defendant filed an answer in this action on April 30, 2019, denying the allegations in the complaint and asserting an affirmative defense of waiver and estoppel. Subsequently, counsel for Defendant moved to be relieved as counsel, which motion was granted by an order of this court dated October 28, 2019 (NYSCEF Doc. No. 14). That order required plaintiff's counsel to serve notice of entry of said order along with notice directing Defendant to retain substitute counsel within 30 days of notice of entry. Plaintiff complied with that requirement (see, NYSECEF Doc. No. 15). That order also stayed the action for 40 days from said notice, and set a January 9, 2020, preliminary conference date for all counsel to appear. Defendant failed to appear on that date and on a subsequent, adjourned, preliminary conference date of April 30, 2020. Neither has any notice of appearance of substitute counsel been filed by Defendant in this matter.

Pursuant to CPLR 321, a corporate defendant must appear through counsel in order to proceed in this court. Failure to retain counsel is grounds for entry of a default judgment against the corporation (*Mail Boxes Etc. USA v Higgins*, 281 AD2d 176 [1st Dept 2001]). A plaintiff that seeks entry of a default judgment pursuant to CPLR 3215 must submit proof of service of the summons and complaint upon the defendant, proof of the facts constituting the claim, and proof of the defendant's default (CPLR 3215[a], [f]). "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]). "[D]efaulters are deemed to have admitted all factual allegations contained in

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<sup>1</sup> The complaint alleges that nominal defendant Domingo Henriquez has a pending personal injury lawsuit against Defendant and nominal defendant 425 Heights Tenants Corp. (complaint ¶ 19). The complaint asserts a first cause of action seeking the premium payment balance sought on this default judgment motion (\$75,404), solely from Defendant. The second and third causes of action seek a declaration that, absent payment by Defendant of said balance, plaintiff is absolved of any obligation to Defendant, Henriquez, or 425 Heights Tenants Corp. No defendant has opposed this motion, including nominal defendants Henriquez and 425 Heights Tenants Corp.

the complaint and all reasonable inferences that flow from them” (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]).

Plaintiff has demonstrated its entitlement to entry of a default judgment by submission of the affirmation of its counsel, Maureen O’Connor, Esq., and exhibits thereto, which demonstrates proof of service of the summons and complaint upon Defendant and Defendant’s failure to appear by counsel, and the affidavit of T. Matthew Held, Divisional Senior Vice President of the Plaintiff, and exhibits thereto, which demonstrates the facts constituting its claim.

Accordingly, it is

ORDERED that the motion of plaintiff American Empire Surplus Lines Insurance Company for entry of a default judgment against defendant Brenmac Construction Corp. is granted; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff American Empire Surplus Lines Insurance Company for entry of a default judgment against defendant Brenmac Construction Corp. in the amount of \$75,404.00, with interest at the statutory rate from November 9, 2018, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that plaintiff American Empire Surplus Lines Insurance Company shall serve a notice of entry of this order upon defendant Brenmac Construction Corp. by electronic filing and by registered or certified mail to its last known address within ten (10) business days of entry of this order; and it is further

ORDERED, ADJUDGED, and DECLARED that, in the event that defendant Brenmac Construction Corp. does not satisfy the judgment set forth herein within 60 days of the service of

a notice of entry of this order, plaintiff shall have no obligation to defend and/or indemnify Brenmac, or any other person or entity seeking coverage under the American Empire Policy, relative to any occurrence, offense, claim or suit which has or may be reported to American Empire, based upon Brenmac's failure to comply with its obligations under the American Empire Policy; and it is further

ORDERED that, in view of the within disposition, and in view of the lack of any cause of action asserted against nominal defendants Domingo Henriquez and 425 Heights Tenants Corp., said nominal defendants are severed from this action entirely, which is now rendered finally disposed.



<u>8/21/2020</u>			<u>LOUIS L. NOCK, J.S.C.</u>	
DATE				
CHECK ONE:	<input checked="" 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 type="checkbox"/>	REFERENCE