

**215 W. 28th St. Prop. Owner LLC v IBK Constr.
Group LLC**

2020 NY Slip Op 34045(U)

December 2, 2020

Supreme Court, New York County

Docket Number: 652382/2020

Judge: Andrea Masley

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

215 WEST 28TH STREET PROPERTY OWNER LLC,225
WEST 28TH STREET PROPERTY OWNER LLC,HAP
CONSTRUCTION LLC,AND, 213-227 WEST 28TH
STREET LLC,

Plaintiff,

- v -

IBK CONSTRUCTION GROUP LLC,VLAD LYUBARSKY,
PATRICK SINCHAK, DIMITRI SHUTOV, YEVGEN
DOLOTOV, ALEXANDER TUKMANIAN, EASTERN
HOISTING AND CRANE SERVICE INC., UNITED
RENTALS INC.,FERRARA LUMBER, CORP., US
CONCRETE INC.,PCI CONTRACTING
INC.,REINFORCING SUPPLY LLC,NEW YORK
CONCRETE CORP., HOWARD I. SHAPIRO
ASSOCIATES CONSULTING ENGINEERS P.C.,BARKER
STEEL LLC,GREG'S IRON WORK INC.,TITAN
FORMWORK SYSTEMS LLC,COLONY HARDWARE
CORPORATION, SUPERSTRUCTURE SAFETY
NETTING INC.,DNV EQUIPMENT CORP., FELDMAN
LUMBER US LBM LLC,HD SUPPLY CONSTRUCTION &
INDUSTRIAL WHITE CAP, BOWNE TECH
CONSTRUCTION CORP., NEW YORK CONCRETE
WASHOUT SYSTEMS, INC.,SUNBELT RENTALS,
INC.,JOHN DOE 1 THROUGH JOHN DOE 10,

Defendant.

INDEX NO. 652382/2020

10/26/2020,
10/26/2020,
10/26/2020,
10/26/2020,
10/26/2020,
10/26/2020

MOTION DATE 10/26/2020

MOTION SEQ. NO. 005 007 008
009 010 011

**DECISION + ORDER ON
MOTION**

2020,
2020,
2020,
2020,
2020

008
011

IBK CONSTRUCTION GROUP LLC

Plaintiff,

-against-

DAIWA HOUSE TEXAS, INC., 215-219 WEST 28TH STREET
MAZAL OWNER LLC

Defendant.

Third-Party
Index No.

2020
2020,
2020,
2020,
2020

008
011

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 140, 141, 142, 143,
144

were read on this motion to/for

JUDGMENT - DEFAULT

652382/2020 215 WEST 28TH STREET vs. IBK CONSTRUCTION GROUP LLC
Motion No. 005 007 008 009 010 011

Page 1 of 5

The following e-filed documents, listed by NYSCEF document number (Motion 007) 150, 151, 152, 153, 154

were read on this motion to/for JUDGMENT - DEFAULT

The following e-filed documents, listed by NYSCEF document number (Motion 008) 155, 156, 157, 158, 159

were read on this motion to/for JUDGMENT - DEFAULT

The following e-filed documents, listed by NYSCEF document number (Motion 009) 160, 161, 162, 163, 164

were read on this motion to/for JUDGMENT - DEFAULT

The following e-filed documents, listed by NYSCEF document number (Motion 010) 165, 166, 167, 168, 169

were read on this motion to/for JUDGMENT - DEFAULT

The following e-filed documents, listed by NYSCEF document number (Motion 011) 170, 171, 172, 173, 174

were read on this motion to/for JUDGMENT - DEFAULT

In motion sequence number 005, plaintiffs move, pursuant to CPLR 3215, for a default judgment against defendant Bowne Tech Construction Corp. for its failure to answer or appear in this action. In motion sequence number 007, plaintiffs move, pursuant to CPLR 3215, for a default judgment against defendant Ferrara Lumber Corp. for its failure to answer or appear in this action. In motion sequence number 008, plaintiffs move, pursuant to CPLR 3215, for a default judgment against defendant Greg's Iron Work Inc. for its failure to answer or appear in this action. In motion sequence number 009, plaintiffs move, pursuant to CPLR 3215, for a default judgment against defendant Reinforcing Supply LLC for its failure to answer or appear in this action. In motion sequence number 010, plaintiffs move, pursuant to CPLR 3215, for a default judgment against defendant Sunbelt Rentals, Inc. for its failure to answer or appear in this action. In motion sequence number 011, plaintiffs move, pursuant to

CPLR 3215, for a default judgment against defendant Super Structure Safety Netting Inc. for its failure to answer or appear in this action.

“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]).

“Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action. 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] [citations omitted]). CPLR 3215 (f) requires a plaintiff to submit “proof of the facts constituting the claim, the default and the amount due by affidavit Where a verified complaint has been served, it may be used as the affidavit of the facts constituting the claim and the amount due; in such case, an affidavit as to the default shall be made by the party or the party's attorney.”

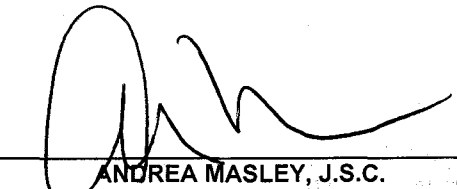
Here, plaintiffs have failed to satisfy this minimal standard. The amended complaint is not verified, and plaintiffs have not submitted an affidavit from a person who has knowledge of the facts supporting its claims. This is required in order for the court to deem the factual allegations of the amended complaint admitted and to examine whether the facts give rise to the causes of action alleged (*see IMG Intl. Mktg. Group, Inc. v SDS William St., LLC*, 32 Misc 3d 1233[A], 2011 NY Slip Op 51561[U], *3 [Sup Ct, NY County 2011]).

Further, the court notes that plaintiffs did not submit memoranda of law in support of their motions. “[A]n affirmation may be filed, under penalties of perjury, not in place of a brief but in place of an affidavit, by an attorney admitted to practice in New York. Affirmations, like affidavits, are reserved for a statement of the relevant facts; a statement of the relevant law and arguments belongs in a brief (i.e., a memorandum of law)” (*Tripp & Co., Inc. v Bank of NY (Del), Inc.*, 2010 NY Slip Op 51274[U], *6 [Sup Ct, NY County 2010] [citation omitted], *citing* 22 NYCRR § 202.8 [c] [Affidavits shall be for a statement of the relevant facts, and briefs shall be for a statement of the relevant law]).

Accordingly, it is
 ORDERED that motion sequence numbers 005, 007, 008, 009, 010, and 011 are denied without prejudice.

Motion Seq. No. 005:


 DATE


 ANDREA MASLEY, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

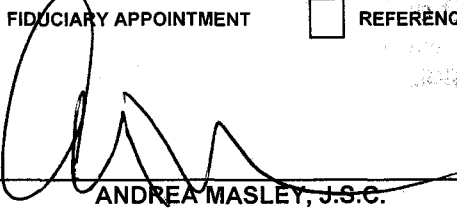
APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER REFERENCE

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT

Motion Seq. No. 007:


 DATE


 ANDREA MASLEY, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER REFERENCE

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT

Motion Seq. No. 008:

12/2/2020
DATE

[Signature]
ANDREA MASLEY, J.S.C.

CHECK ONE:

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<input type="checkbox"/>	SETTLE ORDER	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
<input type="checkbox"/>	SUBMIT ORDER	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

Motion Seq. No. 009:

12/2/2020
DATE

[Signature]
ANDREA MASLEY, J.S.C.

CHECK ONE:

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<input type="checkbox"/>	SETTLE ORDER	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
<input type="checkbox"/>	SUBMIT ORDER	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

Motion Seq. No. 010:

12/2/2020
DATE

[Signature]
ANDREA MASLEY, J.S.C.

CHECK ONE:

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<input type="checkbox"/>	SETTLE ORDER	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
<input type="checkbox"/>	SUBMIT ORDER	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

Motion Seq. No. 011:

12/2/2020
DATE

[Signature]
ANDREA MASLEY, J.S.C.

CHECK ONE:

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<input type="checkbox"/>	SETTLE ORDER	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
<input type="checkbox"/>	SUBMIT ORDER	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: