

**Henry Quentzel Plumbing Supply Co., Inc. v Riggs
Plumbing & Heating at 58th, Inc.**

2020 NY Slip Op 34531(U)

August 5, 2020

Supreme Court, New York County

Docket Number: 656428/2018

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: PART IAS MOTION 38EFM

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HENRY QUENTZEL PLUMBING SUPPLY CO., INC.,	INDEX NO. <u>656428/2018</u>
Plaintiff,	MOTION DATE <u>03/12/2020</u>
- v -	MOTION SEQ. NO. <u>003</u>
RIGGS PLUMBING & HEATING AT 58TH, INC., ERIKA RIBAUDO, EEMA CONSTRUCTION RIGGS PLUMBING & HEATING INC.,	
Defendants.	DECISION + ORDER ON MOTION
-----X	

HON. LOUIS L. NOCK:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 17
 were read on this motion to/for JUDGMENT - DEFAULT.

Upon the foregoing document, it is ordered that plaintiff's instant motion for a default judgment is denied, per the following determination.

This is now the third attempt by plaintiff to obtain summary adjudication in this matter. The first attempt was in the form of a motion for summary judgment in lieu of complaint. That motion (seq. no. 001) was denied by decision and order dated March 15, 2019 (NYSCEF Doc. No. 10), which converted this matter to a plenary action requiring the filing of a complaint. Plaintiff filed a complaint, moving thereafter for a default judgment thereon (seq. no. 002). That motion was denied by decision and order dated August 22, 2019 (NYSCEF Doc. No. 15), citing factual issues emanating from ambiguities existing in the documentary evidence submitted by the plaintiff.¹

In this – plaintiff's third motion geared toward summary adjudication (seq. no. 003) – plaintiff submits what presents as a legible copy of a "Credit Application" issued by it to

¹ Full familiarity with the referenced prior decisions and orders is presumed.
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defendant Riggs Plumbing and Heating @ 58th, Inc. (“Riggs”) (*see*, NYSCEF Doc. No. 14), which contains legible guaranty language at the bottom of it, as well as an affidavit by plaintiff’s “secretary-treasurer,” Andrew Quentzel, stating that said credit application was signed by individual defendant Erika Ribaldo. Mr. Quentzel falls short of attesting that he actually witnessed her sign the document, or how he otherwise possesses personal knowledge of such signing. All he says is: “Erika Ribaldo is the spouse of Carmine Ribaldo.[²] Erika Ribaldo signed a personal guarantee on the credit application.” (NYSCEF Doc. No. 17 ¶ 5.) However, the biggest problem with the motion lies in a separately dispositive procedural defect:

The only affidavits of service filed by the plaintiff in this matter are ordinary form affidavits of service of process applicable in non-electronically-filed cases (*see*, NYSCEF Doc. Nos. 7-9). The record is devoid of the additional proofs required under 22 NYCRR § 202.5-bb (“Electronic Filing in Supreme Court; Mandatory Program”), which would have required additional service on the defendants of a “Notice of Electronic Filing” furnishing instructions to the defendants on how to register for electronic filing, and also including the proviso that, absent such registration, the plaintiff will be required to serve all papers on the defendants “in paper” form.³ Plaintiff has never filed proof of service of the required Notice of Electronic Filing. Indeed, absolutely no proof of service is found in the record with regard to the complaint as well as the motion for a default judgment currently before the court.

For this reason alone – failure of proof of adequate service in this electronically-filed case (and distinct of any other possible evidentiary defect) – plaintiff’s motion for a default judgment must be denied, constituting the third denial of summary adjudication in this matter. There is

² Carmine Ribaldo is identified in the credit application as a principal of Riggs.

³ The blank form Notice of Electronic Filing is available to the public at:

<https://iappscontent.courts.state.ny.us/NYSCEF/live/forms/notice.of.commencement.pdf>

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simply no proof that defendants are even aware of anything other than the initial summons and notice of motion for summary judgment in lieu of complaint, which motion has already been denied on independent grounds (*see, e.g., Ench Ready Mixed Concrete Corp. v Lunedì*, 110 NYS2d 97 [1st Dept 1951] [absence of sufficient proof of proper service upon the defendant would have justified vacatur of judgment]).⁴

Accordingly, it is

ORDERED that plaintiff's instant motion for a default judgment is denied.

This shall constitute the decision and order of the court.

Dated: New York, New York
August 5, 2020

ENTER:



Hon. Louis L. Nock, J.S.C.

⁴ Ancillary, each motion filed by the plaintiff continues to lack any comprehensible evidence that defendant Eema Construction has any privity of contract whatsoever in relation to the credit application lying at the foundation of this case, as previously noted in the court's prior decision and order herein dated March 15, 2019 (NYSCEF Doc. No. 10).