

Radium2 Capital, LLC v Royal Enter. Constr. Inc.

2021 NY Slip Op 30420(U)

February 11, 2021

Supreme Court, New York County

Docket Number: 655495/2019

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
NEW YORK COUNTY**

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

Justice

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RADIUM2 CAPITAL, LLC f/k/a RADIUM2 CAPITAL, INC.,

Plaintiff,

- v -

ROYAL ENTERPRISE CONSTRUCTION INC.; LUNA
CUSTOM POOLS, INC.; ROBERTO LUNA PEREZ; REYNA
MARIA LUNA; ROYAL MOON POOLS, INC.; RR & SONS
CONCRETE CORP.; and LUNA ENTERPRISE
CONSTRUCTION, INC.,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22

were read on this motion to/for

JUDGMENT - DEFAULT

Upon the foregoing documents, the motion of the plaintiff Radium2 Capital, LLC f/k/a Radium2 Capital, Inc. (“Plaintiff”), for entry of a default judgment against defendants Royal Enterprise Construction, Inc., Luna Custom Pools, Inc. (“Custom Pools”), Roberto Luna Perez, Reyna Maria Luna, Royal Moon Pools, Inc., RR & Sons Concrete Corp., and Luna Enterprise Construction, Inc. (all together, “Defendants”), is granted, in accord with the following memorandum decision.

Background

This case arises from an agreement, dated July 25, 2018 (the “Agreement”), between Plaintiff and Luna for the purchase and sale of future receivables (complaint, exhibit A). The Agreement was signed by an individual named Jose R. Luna (“Luna”) on behalf of Custom Pools (*id.*). Luna also personally guaranteed Custom Pool’s obligations under the Agreement (*id.*). On

September 24, 2018, Custom Pools breached the Agreement by failing to deposit its receivables with Plaintiff pursuant to the terms of the Agreement (Abas affidavit ¶ 11). Plaintiff then commenced an action against Custom Pools and Luna in Supreme Court of the State of New York, County of Orange, bearing index number EF010132-18 (the “First Action”). A judgment in favor of Plaintiff and against Defendant in the amount of \$221,778.87 was entered in the First Action on October 17, 2018.

In this action, Plaintiff alleges that the Defendants Royal Enterprise Construction Inc., Luna Custom Pools, Inc., Roberto Luna Perez, Reyna Maria Luna, Royal Moon Pools Inc., RR & Sons Concrete Corp., and Luna Enterprise Construction Inc. (together, “Defendants”) are alter-egos of Custom Pools and asserts causes of action for Fraudulent Conveyance pursuant to Debtor & Creditor Law § 273-276 and 278 (1), successor liability, civil conspiracy, and declaratory relief against Defendants. All Defendants were served with process and have failed to answer the complaint or otherwise appear in the action. Plaintiff now moves for entry of a default judgment against all Defendants.

On a motion for entry of a default judgment, a plaintiff demonstrates its entitlement to entry of a default judgment by submitting proof of the summons and complaint upon Defendant, proof of the facts constituting its claim, proof of default, and proof of the required additional notices (CPLR 3215 [f], [g]). On a motion for entry of a default judgment, “[t]he 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 the complaint and all reasonable inferences that flow from them” (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). Nevertheless, “CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a

failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action” (*Guzetti v City of New York*, 32 AD3d 234, 235 [1st Dept 2006] [internal quotations and citations omitted]).

Plaintiff has satisfied its burden on this motion by submission of the affidavit of Munir Abas, Account Manager for Plaintiff, and exhibits thereto, the affirmation of Plaintiff’s counsel, Boris Yankovich, Esq., and the exhibits thereto, and upon all of the remaining submissions on the motion. In his affidavit, Abas attests to the facts that support Plaintiff’s allegations that Plaintiff transferred its asserts to Defendants and that Defendants are alter-egos of Custom Pools. Abas provides specific details of *indicia* of fraud, including, among others, that the Defendants share an address with Custom Pools, were incorporated by the same individual, share officers and directors, and received working capital from the same source. By failing to appear and contest the allegations, Defendants are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them” (*Woodson*, 100 NY2d at 71). Finally, the Yankovich affirmation demonstrates proof of service of process on all Defendants, proof of the default, and proof of service of all required additional notices. Therefore, Plaintiff has satisfied its burden on the motion and the motion is granted as to defendants Royal Enterprise Construction Inc., Luna Custom Pools, Inc., Roberto Luna Perez, Reyna Maria Luna, Royal Moon Pools Inc., RR & Sons Concrete Corp., and Luna Enterprise Construction Inc. The court declines to enter monetary judgment against Custom Pools in this action because a judgment for the debt incurred pursuant to the Agreement was already entered against Custom Pools in the First Action.

Accordingly, it is

ORDERED that Plaintiff's motion for entry of a default judgment against Defendants is granted; and it is further

ORDERED that the is directed to enter judgment in favor of plaintiff Radium2 Capital, LLC f/k/a Radium2 Capital, Inc. and against defendants Royal Enterprise Construction, Inc., Roberto Luna Perez, Reyna Maria Luna, Royal Moon Pools, Inc., RR & Sons Concrete Corp., and Luna Enterprise Construction, Inc. in the amount of \$221,778.87, with interest at the rate of sixteen percent (16%) from the date of October 17, 2018, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs.

ENTER:



<u>2/11/2021</u>			<u>LOUIS L. NOCK, J.S.C.</u>
DATE			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>
			<input type="checkbox"/> NON-FINAL DISPOSITION
			<input type="checkbox"/> GRANTED IN PART
			<input type="checkbox"/> SUBMIT ORDER
			<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> OTHER
			<input type="checkbox"/> REFERENCE