

ENI USA R&M Co. Inc. v Promomin, LLC

2021 NY Slip Op 32392(U)

September 1, 2021

Supreme Court, New York County

Docket Number: Index No. 656366/2018

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
NEW YORK COUNTY**

PRESENT: HON. LOUIS NOCK PART 38M

Justice

-----X **INDEX NO. 656366/2018**

ENI USA R&M CO. INC., **MOTION DATE 07/19/2021**

Plaintiff, **MOTION SEQ. NO. 005**

- v -

PROMOMIN, LLC, **DECISION + ORDER ON MOTION**

Defendant. -----X

The following e-filed documents, listed by NYSCEF document number (Motion 005) 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82 were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, the motion of plaintiff ENI USA R&M Co. Inc. ("Plaintiff") for entry of a default judgment is granted, in accord with the following memorandum decision.

Plaintiff commenced this action on December 20, 2018 by filing a summons and complaint (NYSCEF Doc. Nos. 1-2). The complaint seeks to recover damages incurred for defendant Promomin, LLC's ("Defendants") failure to pay for commercial lubricants it purchased from Plaintiff. Defendant appeared in the action by filing an answer to the complaint with counterclaims on February 25, 2019 (NYSCEF Doc. No. 5). Plaintiff then filed a pre-discovery motion for summary judgment (NYSCEF Doc. No. 7), which was denied pursuant to an order of this court dated January 30, 2020 (NYSCEF Doc. No. 43). The parties then proceeded with discovery. On April 26, 2021, this court granted a subsequent motion by counsel to Defendant to withdraw from its representation of Defendant (NYSCEF Doc. No. 58). The April 26, 2021 directs that any new counsel to Defendant shall appear in this action by filing a

notice of appearance with the Clerk of the General Clerk's Office within 30 days from the date the notice to retain new counsel is mailed (*id.*). Notice of entry of the April 26, 2021 order was served with a copy of the order upon Defendant on April 27, 2021 (NYSCEF Doc. No. 60). To date, no new counsel has appeared on behalf of Defendant.

Plaintiff now moves for entry of a default judgment on the basis of Defendant's failure to obtain new counsel. As with a corporate defendant, an LLC must appear by counsel in all New York legal actions (*Michael Reilly Design, Inc. v. Houraney*, 40 AD3d 592, 593 [2d Dept 2007]). Where a corporate or LLC party fails to retain counsel following a court order to do so, entry of a default judgment is appropriate (*see Mail Boxes Etc. USA, Inc. v Higgins*, 281 AD2d 176, 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 the complaint and all reasonable inferences that flow from them" (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]).

Plaintiff has met its burden on this motion by submission of an affirmation of its counsel Yoon Ha Cho, Esq., with exhibits thereto, which attests to service of process and Defendant's default by failing to retain new counsel and the affidavit of Cosimo Caracciolo, Vice President of Administration, Finance and Control of Plaintiff, with exhibits thereto, which attests to the facts constituting Plaintiff's claims. Caracciolo attests to the agreement between the parties, to Defendant's default by failing to pay amounts due, and to Plaintiff's damages in the amount of \$157,991.69 (Caracciolo affidavit ¶¶ 15-26). By failing to appear and contest these allegations,

Defendant is deemed to have admitted them (*Woodson v Mendon Leasing Corp.*, 100 NY2d at 71). Plaintiff is also entitled to an award of reasonable attorneys' fees, but whereas the amount requested in Plaintiff's motion is unsupported by proof demonstrating the qualifications of its counsel and amounts billed, the amount of reasonable fees will be referred to a referee for determination.

Accordingly, it is

ORDERED that the motion of plaintiff for entry of a default judgment is granted, and the Clerk of the Court is directed to enter judgment in favor of plaintiff ENI USA R&M Co. Inc. and against defendant Promomin, LLC in the sum of \$157,991.69, with interest at the statutory rate from November 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, and reasonable attorneys' fees in an amount to be determined by a Judicial Hearing Officer ("JHO") or Special Referee; and it is further

ORDERED that the issue of attorneys' fees is severed and a JHO or Special Referee shall be designated to determine the amount of plaintiff's reasonable attorneys' fees, which are hereby submitted to the JHO/Special Referee for such purpose; and it is further

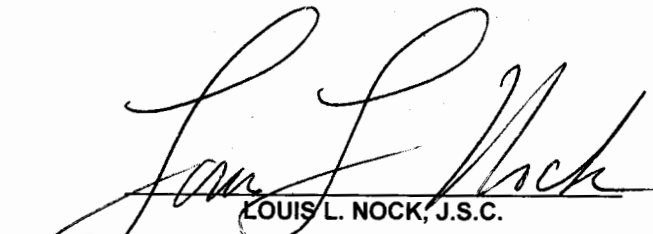
ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

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 determine as specified above.

This constitutes the Decision and Order of the court.

9/1/2021
DATE


LOUIS L. NOCK, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE