

**Goetz Fitzpatrick LLP v Longo Commercial
Cabinets, Inc.**

2022 NY Slip Op 30231(U)

January 20, 2022

Supreme Court, New York County

Docket Number: Index No. 653655/2021

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 38M

Justice

-----X

GOETZ FITZPATRICK LLP,
Plaintiff,

INDEX NO. 653655/2021

MOTION DATE 09/17/2021

MOTION SEQ. NO. 001

- v -

LONGO COMMERCIAL CABINETS, INC., ROBERT
LONGO, and DEBORAH LONGO,

DECISION + ORDER ON
MOTION

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14,
15, 16, 17, 18

were read on this motion for JUDGMENT - DEFAULT

LOUIS L. NOCK, J.

Upon the foregoing documents, it is hereby ordered:

Plaintiff's motion for entry of a default judgment pursuant to CPLR 3215 is denied based
upon the following memorandum decision.

Background

In this action to recover unpaid legal fees, plaintiff Goetz Fitzpatrick LLP ("plaintiff")
moves for entry of a default judgment against defendant Longo Commercial Cabinets, Inc.
("LCC"). Plaintiff does not move against defendants Robert and Deborah Longo.

LCC retained plaintiff to provide legal services and representation in connection with a
Chapter 11 Bankruptcy proceeding before the United States Bankruptcy Court for the Eastern
District Court (In re Longo Commercial Cabinets, Inc., 17-76698-ast, US Bankruptcy Ct,
EDNY, Trust, J.) pursuant to a general retainer, which the Bankruptcy Court approved by order
dated December 6, 2017 (NYSCEF Doc. No. 14). By subsequent order, the Bankruptcy Court

granted a Fee Application by plaintiff for its fees for services rendered during the proceeding in the amount of \$20,166.00, to be repaid in monthly installments of \$1,000 (NYSCEF Doc. No. 15). The Bankruptcy Court expressly retained jurisdiction to enforce the provisions of the fee order (*id.*). The same day, the Bankruptcy Court dismissed the Chapter 11 proceeding, stating that the fee order would survive dismissal, and that it was retaining jurisdiction to enforce the provisions of the dismissal order (NYSCEF Doc. No. 16). Plaintiff asserts that LCC has paid only \$1,000.00 of the amount set forth in the fee order, and owes an outstanding balance of \$19,166.00, as well as post-bankruptcy work for which it billed LCC \$595.00. Plaintiff seeks a default judgment in the total amount of \$19,761.00 on its four causes of action for breach of contract, unjust enrichment, quantum meruit, and account stated.

Plaintiff commenced this action by filing a summons and complaint on June 8, 2021 (NYSCEF Doc. No. 1). An affidavit of service filed on June 25, 2021 attests to service on LCC on June 24, 2021 by service on the Secretary of State pursuant to Business Corporation Law § 306 (NYSCEF Doc. No. 2). An affidavit of additional service filed on July 27, 2021 attests to service on LCC by mail on July 27, 2021 of the notice required pursuant to CPLR 3215(g)(4) (NYSCEF Doc. No. 4). Defendants Robert and Deborah Longo have appeared in the action and interposed an answer and counterclaims (NYSCEF Doc. No. 6). To date, LCC has not answered the complaint or otherwise appeared in the action. There is no opposition to the motion.

Discussion

A plaintiff that seeks entry of a default judgment for a defendant's failure to answer 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). "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]). 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]).

Here, as an initial matter, in determining the fees owed to plaintiff for its representation during the Bankruptcy proceeding, the Bankruptcy Court expressly retained jurisdiction to enforce the provisions of the fee order (NYSCEF Doc. No. 15). Moreover, the Bankruptcy Court stated that the fee order would survive dismissal of the proceeding (NYSCEF Doc. No. 16). Where the Bankruptcy Court has retained jurisdiction in this manner, it is the proper venue to challenge LCC’s alleged failure to pay (*Person v Dedvukaj*, 163 AD3d 438, 439 [1st Dept 2018] [“Supreme Court correctly decided that dismissal of the complaint was warranted because the bankruptcy court retained jurisdiction over the issue of hid legal fees, even if some work postdated the confirmation of the entities’ reorganization plan”]; *Wollman v Jocar Realty Co., Inc.*, 19 AD3d 210, 211 [1st Dept 2005] [“Where jurisdiction is expressly retained by the bankruptcy court, it should be construed as exclusive jurisdiction, even though not specifically denominated as such, so as not to render the provision a nullity”]). Thus, this Court may not enter judgment for plaintiff’s fees resulting from the bankruptcy proceeding.

With respect to the \$595.00 asserted by plaintiff resulting from unspecified post-bankruptcy work for LCC, plaintiff has failed to meet its burden on the motion. The affirmation of plaintiff’s Senior Counsel, Scott D. Simon, Esq., sets forth that LCC requested that plaintiff

perform certain post-bankruptcy services, which plaintiff invoiced to LCC, and which invoices LCC retained without objection (NYSCEF Doc. No. 10, ¶¶ 33-38). However, Plaintiff does not submit any documentation in the form of a separate post-bankruptcy retainer, invoices, or other record indicating the basis for those fees.

Accordingly, it is hereby

ORDERED that the motion is denied; and it is further

ORDERED that the parties shall appear for a virtual preliminary conference on Microsoft Teams before the Court on February 9, 2022 at 10:00 AM.

This will constitute the decision and order of the court.

ENTER:



<u>1/20/2022</u>			<u>LOUIS L. NOCK, J.S.C.</u>	
DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE