

**Metropolitan Partners Fund IIIA, LP v Encore Park
Fund 1, LLC**

2022 NY Slip Op 30410(U)

February 3, 2022

Supreme Court, New York County

Docket Number: Index No. 656325/2020

Judge: Andrew Borrok

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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: COMMERCIAL DIVISION PART 53

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METROPOLITAN PARTNERS FUND IIIA, LP, SERIES
 F&F OF METROPOLITAN PARTNERS FUND IV, LLC,
 SERIES INSTITUTIONAL OF METROPOLITAN
 PARTNERS FUND IV, LLC, METROPOLITAN EQUITY
 PARTNERS ADMINISTRATION, LLC, METROPOLITAN
 EQUITY PARTNERS MANAGEMENT, LLC,

INDEX NO. 656325/2020

MOTION DATE 12/29/2021

MOTION SEQ. NO. 005

Plaintiff,

**DECISION + ORDER ON
 MOTION**

- v -

ENCORE PARK FUND 1, LLC, ENCORE HOLDINGS,
 LLC, ENCORE AUTOMOTIVE ACCEPTANCE
 CORPORATION, RICHARD COLLINS, ERIC NORDLUND,
 GEMCAP LENDING I, LLC, MIDCAP FUNDING XVIII
 TRUST, MIDCAP FINANCIAL SERVICES, LLC

Defendant.

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 106, 107, 108, 110
 were read on this motion to/for JUDGMENT - DEFAULT.

Motion for default granted as unopposed. There is an alleged default, affidavit of merit, proper
 service, and the defendants have received at least 5 days' notice of the time and place of the
 motion for default judgment.

Accordingly, it is

ORDERED that GemCap Lending I, LLC is deemed in default of this action; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Metropolitan Partners Fund
 IIIA, LP, Series F&F of Metropolitan Partners Fund IV, LLC, Series Institutional of

Metropolitan Partners Fund IV, LLC, Metropolitan Equity Partners Administration, LLC, and Metropolitan Equity Partners Management, LLC and against GemCap Lending I, LLC in the amount of \$6,673,257.16, plus (i) contractual interest of 17% per annum, from June 1, 2021 until the date of this decision, (ii) statutory interest of 9% per annum, (iii) reasonable attorneys' fees; and it is further

ORDERDER that pursuant to CPLR 3126, GemCap Lending I, LLC is hereby fined the sum of \$2,500 for failure to appear at the court conferences, which payment shall be paid to the Lawyers' Fund for Client Protection and shall be deposited with the Clerk of the Court for transmittal to the Commissioner of Taxation and Finance, within ten days after delivery of the quit claim to the receiver; and it is further

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to determine the issue of 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),

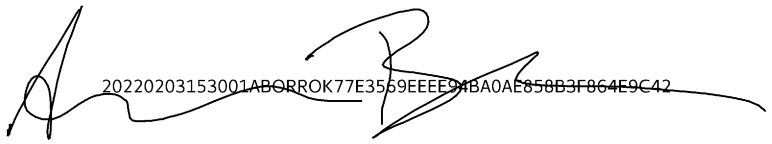
shall assign this matter at the initial appearance to an available JHO/Special Referee to determine as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiffs shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the “References” link on the court’s website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that on the initial appearance in the Special Referees Part the parties shall appear for a pre-hearing conference before the assigned JHO/Special Referee and the date for the hearing shall be fixed at that conference; the parties need not appear at the conference with all witnesses and evidence; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue of attorneys’ fees shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the “References” link on the court’s website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules).



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2/3/2022
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE