

**Commissioners of the State Ins. Fund v Techgrass,
LLC**

2022 NY Slip Op 30979(U)

March 24, 2022

Supreme Court, New York County

Docket Number: Index No. 452128/2020

Judge: Sabrina Kraus

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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. SABRINA KRAUS PART 57TR

Justice

-----X
COMMISSIONERS OF THE STATE INSURANCE FUND
Plaintiff,
- v -
TECHGRASS, LLC,
Defendant.
-----X

INDEX NO. 452128/2020
MOTION DATE 03/04/2022
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11 were read on this motion to/for JUDGMENT - DEFAULT

BACKGROUND

Plaintiff commenced this action seeking \$21,100.54, plus interest, for breach of contract and account stated for monies owed under an insurance policy issued to defendant by plaintiff.

Plaintiff alleges defendant is a corporation organized under the laws of the state of New York, with a principal place of business at 40 Wall Street, 28th Floor, New York, New York. Plaintiff asserts defendant requested a workers' compensation insurance policy under policy number XXXX8636. Plaintiff provided defendant with workers compensation insurance coverage from July 19, 2018 to November 17, 2018 until the policy was canceled on November 17, 2018. Plaintiff billed defendant \$5,272.43 for coverage under that policy. Plaintiff is seeking the amount owed plus \$1,159.93 in collection fees.

Plaintiff asserts defendant requested a second workers' compensation insurance policy under policy number XXXX0312. Plaintiff provided defendant with workers compensation insurance coverage from April 4, 2017 to June 2, 2018 until the policy was canceled on June 2, 2018. Plaintiff billed defendant \$11,941.95 for coverage under that policy. Plaintiff is seeking

the amount owed plus \$2,627.23 in collection fees. Plaintiff asserts defendant was sent a statements on said accounts, retained the statements and did not objected to the same.

The summons and complaint were filed on October 29, 2020, and defendant has failed to appear or file an answer and the time within which the defendant may answer or otherwise move to respond to said complaint has expired and has not been extended.

PENDING MOTION

On February 7, 2022, plaintiff moved pursuant to CPLR §3215, for a default judgment against Techgrass, LLC in the amount of \$21,100.54, for breach of contract and account stated. Defendant has failed to appear or submit opposition.

DISCUSSION

CPLR § 3215(a) provides, in pertinent part, that “[w]hen a defendant has failed to appear, plead or proceed to trial... the plaintiff may seek a default judgment against [it].” “On a motion for leave to enter a default judgment pursuant to CPLR §3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party's default in answering or appearing.” *Atlantic Cas. Ins. Co. v RJNJ Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011).

Although plaintiff seeks this relief over a year after the default occurred, the Governor’s executive ordered tolled the time plaintiff had to move for such relief until approximately November 2021. The court is satisfied with plaintiff’s explanation for the reasonable delay in moving for a default.

A claim for breach of contract requires plaintiff to establish “the existence of a contract, the plaintiff's performance thereunder, the defendant's breach thereof, and resulting damages” (*Harris v. Seward Park Hous. Corp.*, 79 A.D.3d 425, 426, 913 N.Y.S.2d 161 [1st Dept. 2010]).

A claim for account stated requires plaintiff to establish: evidence of an account (a bill), based on a prior transaction between the parties, which was presented by one party to another; the recipient accepted the account (bill) as correct, either expressly or implicitly by failing to object to the amount stated therein within a reasonable timeframe; and evidence the recipient had promised to pay the amount stated (*e.g. National Commerce Exch. of Long Is., Inc. v. Cosmopolitan Coach, Ltd.*, 120 A.D.3d 1208, 1209, 992 N.Y.S.2d 309 [2d Dept. 2014]). “An agreement may be implied where a defendant retains bills without objecting to them within a reasonable period of time, or makes partial payment on the account” (*American Express Centurion Bank v. Cutler*, 81 A.D.3d at 762, 916 N.Y.S.2d 622; *see Landau v. Weissman*, 78 A.D.3d 661, 662, 913 N.Y.S.2d 107).

In support plaintiff submits the affirmation of Jeffrey H. Ward, Esq (NYSCEF Doc 7), a copy of the summons and complaint (NYSCEF Doc 8), and an affidavit of service on the Secretary of State of New York (NYSCEF Doc 9); and an affidavit of James DeConno, a senior auditor employed by plaintiff, along with copies of statements sent to defendant (NYSCEF Doc 6).

Plaintiff does not submit in support, a copy of the policy or agreement between the parties, therefor plaintiff has failed to established entitlement to a default judgment as against defendant for breach of contract. Plaintiff does submit copies of statements sent for both policies and the affirmation of James DeConno, stating the same were sent to defendant and retained without objection. Plaintiff has established entitlement to a default judgment for account stated.

CONCLUSION

Wherefore, it is hereby

ORDERED that plaintiff's motion seeking a default judgment as to the second cause of action for account stated, against defendant Techgrass LLC., is granted on default; and it is further

ORDERED that plaintiff is granted a judgment in the amount of \$21,001.54 with interest from October 29, 2020; and it is further

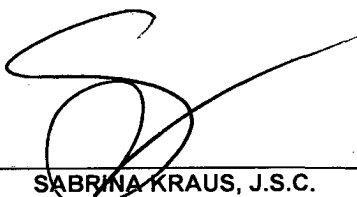
ORDERED that the clerk shall enter judgment accordingly; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on defendant, at 40 Wall Street, 28th Floor, New York, New York and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

This constitutes the decision and order of the court.

3/24/2022
DATE


SABRINA KRAUS, 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