

<b>Consolidated Edison Co. of N.Y. Inc. v Fassacesia</b>
2022 NY Slip Op 31103(U)
April 1, 2022
Supreme Court, New York County
Docket Number: Index No. 650113/2022
Judge: Sabrina Kraus
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. SABRINA KRAUS PART 57TR**

*Justice*

-----X

CONSOLIDATED EDISON COMPANY OF NEW YORK  
INC.

Plaintiff,

- v -

ROCCO FASSACESIA,

Defendant.

-----X

INDEX NO. 650113/2022

MOTION DATE 03/11/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2  
were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT.

**BACKGROUND**

Plaintiff commenced this action by service of a Summons and Notice of Motion for Summary Judgment in Lieu of Complaint, seeking to renew plaintiff’s judgment against defendant for an additional twenty (20) years, and extending plaintiff’s lien on defendant’s real property for an additional ten (10) years pursuant to CPLR §3213 and CPLR §5014.

Plaintiff alleges that on or about January 2009 federal authorities arrested defendant on charges of committing the felony of commercial bribery while employed by plaintiff. On July 14, 2009, defendant plead guilty to those charges in admitting that he accepted cash payments from a contractor in exchange for approving fraudulent invoices from the contractor in his role as Senior Specialist at Con Edison. On August 20, 2009, plaintiff commenced an action (Index No. 602597/2009) against the defendant to recover damages, disgorge ill-gotten gains, impose punitive damages, and otherwise compensate plaintiff for defendant’s participation in the bribery scheme.

On October 3, 2011, the parties agreed to settle the case and entered into a Stipulation of Settlement that the Court so ordered on October 25, 2011 (NYSCEF Doc 3). On November 14, 2011, plaintiff filed a proposed judgment where the defendant consented to the entry of a judgment against him in the amount of \$339,149.08. On November 15, 2011, the judgment was entered and docketed with the New York County Clerk.

Plaintiff asserts the judgment remains unsatisfied in the amount of \$180,002.97. The defendant continues to make monthly payments towards the judgment. Plaintiff maintains that the Governor's Executive Order 202.8 tolled all statute of limitations for 228 days starting on March 20, 2020 until November 3, 2020, therefore plaintiff's lien on real property will expire on or before July 1, 2022.

### **PENDING MOTION**

Plaintiff now seeks to renew the judgment against defendant for an additional twenty (20) years and extend plaintiff's lien on defendant's real property for an additional ten (10) years pursuant to CPLR §3213 and CPLR §5014.

The motion was returnable on March 11, 2022. Defendant failed to appear or submit opposition

### **DISCUSSION**

CPLR § 3213 provides in pertinent part, “[w]hen an action is based upon an instrument for the payment of money only or upon any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint.”

Plaintiff's motion herein is based upon a judgment entered against defendant on November 15, 2011 (NYSCEF Doc 3).

CPLR §5014, authorizes the entry of a renewal judgment with a new twenty (20) year life when the judgment is nearing the end of its first ten (10) years without having been satisfied. CPLR 5014(1) also permits a judgment creditor to commence an action for a renewal judgment where 10 years have elapsed since the judgment was originally docketed.

In support of the motion, plaintiff submits the affirmation of Joeann E Walker, Esq., together with a copy of the stipulation of settlement dated October 3, 2011, a copy of the affidavit of defendant authorizing the entry of a judgment, and a copy of the judgment entered November 15, 2011 (NYSCEF Doc 3).

Defendant was serviced by substituted service on Joanne Fossacesia, a person of suitable age and discretion, found at 130 Fair Street, Carmel, New York, 10312, defendant's usual place of abode, on January 11, 2022 at 10:29 am. An additional mailing was made to defendant, at that address, on January 13, 2022. Defendant has failed to appear or submit opposition.

Plaintiff has established a prima facie entitlement to a judgment as a matter of law.

Wherefore, it is hereby

ORDERED plaintiff's motion is granted, on default; and it is further


ORDERED plaintiff may submit a renewal judgment and lien against defendant in the amount of \$180,002.97, plus interest from November 15, 2011; and it is further

ORDERED that the Clerk of the Court shall enter judgement 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 130 Fair Street, Carmel, New York, 10312, and on 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](http://www.nycourts.gov/supctmanh)); and it is further

ORDERED that this constitutes the decision and order of the court.

<u>4/1/2022</u> DATE	 _____ SABRINA KRAUS, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input 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