

North Am. Specialty Ins. Co. v APS Contrs., Inc.

2022 NY Slip Op 31417(U)

April 27, 2022

Supreme Court, New York County

Docket Number: Index No. 651872/2021

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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NORTH AMERICAN SPECIALTY INSURANCE COMPANY,

Plaintiff,

- v -

APS CONTRACTORS, INC., APS CONTRACTORS GROUP, INC., AAA WINDOWS & DOORS CORPORATION, MAC MULTI GROUP, LLC, GOCE BLAZESKI, ZANETA BLAZESKI, BOBI NIKOLSKI

Defendant.

INDEX NO. 651872/2021

MOTION DATE 10/06/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

-----X

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, North American Specialty Insurance Company's (the Surety) motion for (i) default judgment against APS Contractors, Inc. (APS), APS Contractors Group, Inc. (APS Group), Mac Multi Group, LLC (Mac Multi) and Goce Blazeski (APS, APS Group, Mac Multi and Goce Blazeski, hereinafter, collectively, the Defaulting Defendants), and (ii) summary judgment against AAA Windows & Doors Corporation (AAA), Zaneta Blazeski and Bobi Nikolski (collectively, the Answering Defendants) must be granted.

The Surety is entitled pursuant to CPLR 3215 to a default judgment as against the Defaulting Defendants because (i) the Defaulting Defendants have failed to appear in this action and (ii) the Surety has produced (a) an affidavit of merit (NYSCEF Doc. No. 18) and certain supporting exhibits (NYSCEF Docs. No. 19-73), (b) proof of proper service (NYSCEF Docs. No. 76, 78,

80, 82), (c) an additional mailing pursuant to CPLR § 3215(g) (NYSCEF Docs. No. 77, 79, 81, 83) and (d) an affidavit of non-military service (NYSCEF Doc. No. 84).

The Surety is also entitled to summary judgment pursuant CPLR § 3212. The Surety has adduced (i) a certain General Agreement of Indemnity (the **2014 Indemnity Agreement**), dated May 30, 2014, executed by Goce Blazeski individually and on behalf of APS, Zaneta Blazeski individually and on behalf of AAA, Bobi Nikoloski individually and on behalf of AAA, and Aleksander Stankovski on behalf of Mac Multi, in favor of the Surety and (ii) a General Agreement of Indemnity, dated October 6, 2017 (the **2017 Indemnity Agreement**), executed by Goce Blazeski individually and on behalf of APS, Ivana Ristova individually and on behalf of APS and AAA, and Zaneta Blazeski individually and on behalf of AAA, in favor of the Surety.

Pursuant to the 2014 Indemnity Agreement and the 2017 Indemnity Agreement, the defendants agreed to indemnify the Surety against potential claims without loss, cost or expense to the Surety (NYSCEF Docs. No. 89, 90 at ¶ 2). It is undisputed that the Surety loaned monies to APS and that APS defaulted (NYSCEF Docs. No. 21, 92) and that the Surety incurred \$27,079,454.45 in performance bond losses for completion of work (NYSCEF Doc. No. 23), \$543,249.91 in payment bond losses for labor and materials (NYSCEF Doc. No. 24), and \$3,670,039.74 in consulting and legal fees, costs and expenses (NYSCEF Doc. No. 74). Additionally, the Surety anticipates additional projected performance bond losses totaling \$32,933,102.90 (*id.*). As such the Surety has met its burden of coming forward with sufficient evidence entitling them to judgment. (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Zuckerman v New York*, 49 NY2d 557, 562 [1980]).

The defendants fail to raise a material issue of fact. Significantly, obligations under the 2014 Indemnity Agreement were not released or terminated:

20. Subsequent Agreements: The execution of a subsequent General Indemnity Agreement shall not cause a waiver, novation, extinguishment, release, reduction or limitation of the rights and obligations under a prior General Indemnity Agreement. Similarly, ***if this Agreement is a subsequent General Indemnity Agreement, it shall not cause a waiver, novation, extinguishment, release, reduction or limitation of the rights and obligations under a prior General Indemnity Agreement.*** The rights and obligations under this Agreement and under any prior General Indemnity Agreements shall remain in full force and effect unless expressly terminated.

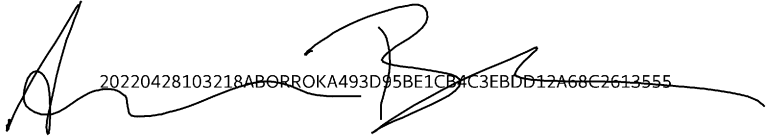
(NYSCEF Docs. No. 2 & 90, ¶ 20 [emphasis added]). It is irrelevant that the Plaintiff purportedly acknowledged by email that the 2017 GIA was the most recently executed GIA (NYSCEF Doc. No. 91). Thus, the Surety is entitled to summary judgment.

The court has considered the defendants remaining arguments and finds them unavailing.

Accordingly, it is

ORDERED that the Surety's motion (Motion 001) for (i) default judgment against APS, APS Group, Mac Multi and Goce Blazeski and (ii) summary judgment against AAA, Zaneta Blazeski and Bobi Nikolski is granted; and it is further

ORDERED that the Surety submit a proposed Judgment, on notice, within 14 days of the date of this decision and order.



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4/27/2022
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