

**Commissioners of the State Ins. Fund v NAF
Constr. Mgt. LLC**

2022 NY Slip Op 31443(U)

May 2, 2022

Supreme Court, New York County

Docket Number: Index No. 453701/2021

Judge: Sabrina Kraus

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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 -

NAF CONSTRUCTION MANAGEMENT LLC, NAF -
SECURITY LLC

Defendant.

-----X

INDEX NO. 453701/2021

MOTION DATE 04/20/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for JUDGMENT - DEFAULT

BACKGROUND

Plaintiff commenced this action seeking \$531,517.59, 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 600 Madison Avenue, 15th Fl, New York, New York 10022. Plaintiff asserts defendant requested a workers' compensation insurance policy under policy number 22217327. Plaintiff provided defendant with workers compensation insurance coverage from July 17, 2012 until the policy was canceled on January 20, 2021. Plaintiff billed defendant \$531,517.59 for coverage under that policy. Plaintiff is seeking the amount owed plus costs.

The summons and complaint were filed on November 18, 2021, 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 April 20, 2022, plaintiff moved pursuant to CPLR §3215, for a default judgment against NAF Construction Management LLC and NAF - Security LLC in the amount of \$531,517.59, 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).

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 Michael Totaro, Esq (NYSCEF Doc 11), the affidavit Shanette Welch, an underwriter employed by plaintiff (NYSCEF Doc 10); a copy of the insurance policy and application (NYSCEF Doc 13); a copy if the inclusion form (NYSCEF Doc 14); a copy of the final invoice (NYSCEF Doc 15); a copy of the summons and complaint (NYSCEF Doc 16), and an affidavit of service on the Secretary of State of New York (NYSCEF Doc 17); and an affidavit of additional mailing (NYSCEF Doc 18).

Plaintiff has established entitlement to a default judgment as against NAF Construction Management LLC and NAF - Security LLC for breach of contract and account stated.

CONCLUSION

Wherefore, it is hereby

ORDERED that plaintiff's motion seeking a default judgment against defendant NAF Construction Management LLC and NAF - Security LLC is granted on default; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff in the sum of \$531,517.59, with interest at the statutory rate from November 18, 2021, as calculated by the Clerk, together with costs and disbursements, as taxed by the Clerk; and it is further

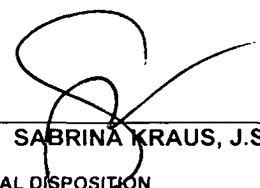
ORDERED that the clerk shall enter judgment accordingly; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on defendants 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.

5/2/2022 DATE	 SABRINA KRAUS, J.S.C.							
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE