

Ideal Supply Co. v Giachetti Plumbing & Heating Co.
2022 NY Slip Op 31465(U)
May 4, 2022
Supreme Court, New York County
Docket Number: Index No. 651705/2020
Judge: Debra James
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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. DEBRA JAMES

PART 59

Justice

-----X

INDEX NO. 651705/2020

THE IDEAL SUPPLY COMPANY,

MOTION DATE 04/27/2022

Plaintiff,

MOTION SEQ. NO. 002

- v -

GIACHETTI PLUMBING & HEATING COMPANY,
STRUCTURE TONE, LLC, and TRAVELERS CASUALTY
AND SURETY COMPANY OF AMERICA,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

were read on this motion to/for JUDGMENT - DEFAULT.

ORDER

Upon the foregoing documents, it is

ORDERED that plaintiffs' motion for a default judgment on the first cause of action for breach of contract against defendant GIACHETTI PLUMBING & HEATING CORP. is GRANTED, without opposition, except that to the extent that plaintiff seeks an award of attorneys' fees, such application is denied; and it is further

ORDERED that liability on the first cause of action for breach of contract is granted on default, and such claim shall be severed and be continued; and it is further

DECLARED, ORDERED and ADJUDGED that (1) by filing a Notice under the New York Mechanic's Lien Law, plaintiff has acquired a good, valid and subsisting lien in the amount of \$50,436.92, together with interest; and (2) plaintiff shall be paid the amount of such lien, with interest accrued and accruing, from the interest of defendant GIANCHETTI PLUMBING & HEATING CORP. in the Bond; and it is further

ORDERED that the issue of damages on the first cause of action, including interest and late fees, to be assessed against defendant GIACHETTI PLUMBING & HEATING CORP. is referred for determination pursuant to CPLR § 3215 (b) to a Special Referee and that within sixty (60) days from the date of this Order the plaintiff shall cause a copy of this order with notice of entry, including proof of service thereof, to be filed with the Special Referee clerk (Room 119M, 646-386-3028 or spref@nycourts.gov) to arrange a date for a reference to determine pursuant to CPLR § 4317 (b); and it is further

ORDERED and ADJUDGED that pursuant to CPLR § 3215 (b) the Clerk is directed to enter judgment in favor of plaintiff IDEAL SUPPLY COMPANY and against defendant GIACHETTI PULMBING & HEATING CORP., in accordance with the report of the aforementioned Special Referee without any further application.

DECISION

In this action for breach of contract, plaintiff IDEAL SUPPLY COMPANY moves for a default judgment based on the failure of defendant GIACHETTI PLUMBING & HEATING CORP. to answer or appear.

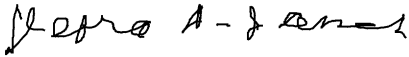
On this motion, plaintiff has complied with the strictures of CPLR 3215(f), having submitted: proof of service of the summons and complaint, proof of service of this motion upon the defendant, and an affidavit of a person with knowledge of the facts. Plaintiff has also submitted an affirmation as to defendant's default pursuant to CPLR 3215 (f), and proof of additional service of the summons upon defendant pursuant to 3215 (g) (3) (i).

To the extent plaintiff seeks an award of attorneys' fees, such application is denied, as plaintiff submits neither agreement nor statutory basis therefor. See G.M. Crisalli & Associates, Inc. v Prestige Contracting, Inc., 199 AD3d 1307, 1310 (4th Dept 2021).

In addition, plaintiff does not allege the elements of a claim for an account stated, with respect to the invoices. Specifically, plaintiff never alleges that defendant retained and never objected to the invoices. Therefore, plaintiff has not established a sum certain and an inquest on damages for breach of contract must be held. Compare Mintz & Gold LLP v

Daibes, 125 AD3d 488, 489 (1st Dept 2015) and see Pikulin v Mikshakov, 258 AD2d 450 (2d Dept 1999).

Finally, the action as against defendants Structure Tone, LLC and Travelers Casualty and Surety Company of America was discontinued per Stipulation of Partial Discontinuance dated October 6, 2020 (NYSCEF Document Number 10).


20220504195536DJAMESCA495ADD09204740AB5143E04DD706FC

5/4/2022
DATE

DEBRA JAMES, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE