

<b>Arcos v AIMCO 464-466 Amsterdam 200-210 W. 83rd St., LLC</b>
2022 NY Slip Op 31604(U)
May 16, 2022
Supreme Court, New York County
Docket Number: Index No. 160214/2018
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

FABIAN ARCOS,

Plaintiff,

- v -

AIMCO 464-466 AMSTERDAM 200-210 WEST 83RD  
STREET, LLC, ARCHSTONE BUILDERS LLC,

Defendant.

-----X

AIMCO 464-466 AMSTERDAM 200-210 WEST 83RD  
STREET, LLC

Plaintiff,

-against-

DANICA, LLC

Defendant.

-----X

ARCHSTONE BUILDERS LLC

Plaintiff,

-against-

L&M AIR, INC., SINGER EQUIPMENT COMPANY, INC.

Defendant.

-----X

AIMCO 464-466 AMSTERDAM 200-210 WEST 83RD  
STREET, LLC, ARCHSTONE BUILDERS LLC

Plaintiff,

-against-

FIVE STAR AWNINGS, INC.

Defendant.

-----X

INDEX NO. 160214/2018

MOTION DATE 05/13/2022

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595495/2019

Second Third-Party  
Index No. 596161/2019

Third Third-Party  
Index No. 595477/2021

AIMCO 464-466 AMSTERDAM 200-210 WEST 83RD  
STREET, LLC, ARCHSTONE BUILDERS LLC

Fourth Third-Party  
Index No. 595643/2021

Plaintiff,

-against-

FIVE STAR KITCHEN INSTALLATIONS, INC., NU-PHASE  
MECHANICAL, INC.

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 61, 62, 63, 64, 65, 66, 67, 68, 69

were read on this motion to/for

JUDGMENT - DEFAULT

### **BACKGROUND**

This personal injury action stems from an accident that allegedly occurred on August 17, 2018 at the Danica Restaurant Project (the Project) located at 464 Amsterdam Avenue, New York, New York, where plaintiff was allegedly knocked to the ground while certain equipment was being transported to the cellar level when the workers handling the equipment lost control, causing the equipment and one worker to strike him.

On or prior to August 17, 2018, Five Star and Nu-Phase were subcontractors engaged in certain work at the Project located at 464 Amsterdam Avenue, New York, New York.

The plaintiff commenced this action against defendants/fourth third-party plaintiffs, on November 2, 2018 in New York County Supreme Court with the filing of a summons and complaint, Defendants/fourth third-party plaintiffs, Archstone and Aimco, filed their answer to plaintiff's complaint on January 16, 2019 and January 18, 2019, respectively.

On July 15, 2021, Defendants/fourth third-party plaintiffs commenced a fourth third-party action against fourth third-party defendants. The fourth third-party summons and complaint was served via New York State Secretary of State on the fourth third-party defendants, Five Star

and Nu-Phase, on August 19, 2021 and October 1, 2021, respectively. Fourth third-party defendants have failed to answer the fourth third-party complaint.

### **PENDING MOTION**

On February 22, 2022, plaintiff moved for an order, pursuant to CPLR §3215, granting a default judgment against fourth third-party defendants Five Star Kitchen Installations, Inc. and Nu-Phase Mechanical Inc. Fourth third – party defendants have failed to appear or submit opposition.

### **DISUSSION**

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).

On March 9, 2022, the court (D’Auguste, J) issued an interim order, holding the motion in abeyance for plaintiff to submit proof of compliance with the additional mailing requirement of CPLR §3215(g)(4).

On March 11, 2022, plaintiff submitted an affidavit showing the fourth third party defendants were served with additional notice on March 11, 2022.

Plaintiff has established *prima facie* entitlement to a default judgment as against Five Star Kitchen Installations, Inc. and Nu-Phase Mechanical Inc.

**CONCLUSION**

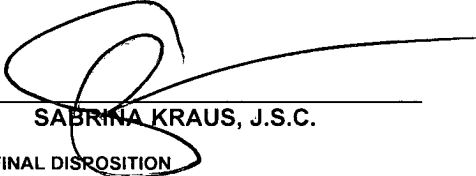
Wherefore, it is hereby

ORDERED that plaintiff’s motion seeking a default judgment against defendant Five Star Kitchen Installations, Inc. and Nu-Phase Mechanical Inc. is granted; and it is further

ORDERED damages are to be determined at trial; 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 all other 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](http://www.nycourts.gov/supctmanh)); and it is further

5/16/2022			
DATE			SABRINA KRAUS, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE