

Tadco Constr. Corp. v General Contrs. Assn. of N.Y., Inc.
2022 NY Slip Op 32999(U)
August 31, 2022
Supreme Court, New York County
Docket Number: Index No. 656320/2020
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41
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TADCO CONSTRUCTION CORP.,

Index No. 656320/2020

Plaintiff

- against -

DECISION AND ORDER

GENERAL CONTRACTORS ASSOCIATION OF NEW
YORK, INC.,

Defendant
-----x

LUCY BILLINGS, J.S.C.:

I. INTRODUCTION

Plaintiff construction contractor moves for a default judgment against defendant trade association, which represents contractors in the heavy civil construction industry in New York City. C.P.L.R. § 3215. Plaintiff's President attests that defendant was the collective bargaining agent that negotiated collective bargaining agreements with labor unions on behalf of the trade association's members. When plaintiff previously was a member of defendant association, plaintiff, through defendant as plaintiff's agent, entered a collective bargaining agreement with Teamsters Union Local 282, effective July 1, 2002, through June 30, 2006. During the collective bargaining agreement's term, disputes arose between plaintiff and Local 282 over plaintiff's contributions to the union's fringe benefit funds. Consequently, plaintiff notified Local 282 and defendant that plaintiff would

not enter any new collective bargaining agreement with Local 282 after the 2002-2006 collective agreement expired. In connection with this withdrawal, plaintiff also terminated its membership in defendant association. Having terminated its membership, plaintiff nonetheless now sues defendant for breach of defendant's fiduciary duty to plaintiff to protect it from continuing claims by Local 282's fringe benefit funds against it for contributions.

To obtain a default judgment, plaintiff must establish a prima facie claim through admissible evidence. C.P.L.R. § 3215(f); PV Holding Corp. v. AB Quality Health Supply Corp., 189 A.D.3d 645, 646 (1st Dep't 2020); 154 E. 62 LLC v. 156 E 62nd St. LLC, 159 A.D.3d 498, 498 (1st Dep't 2018). For defendant to extend its time to answer the complaint, which would avoid a default judgment, defendant must present a reasonable excuse for having defaulted. C.P.L.R. § 3012(d); Epstein Becker & Green, P.C. v. Samson Mgt. LLC, 188 A.D.3d 454, 455 (1st Dep't 2020). Plaintiff fails to establish a prima facie claim, which defendant further undermines by presenting meritorious defenses. Defendant also satisfies its burden to present a reasonable excuse for defaulting.

II. PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES

All conduct by defendant about which plaintiff complains post-dates plaintiff's membership in defendant association. Not

only does plaintiff fail to explain how defendant owed a continuing fiduciary duty to plaintiff after it terminated its membership, but in opposition to plaintiff's motion defendant also points out that the claims by Local 282's fringe benefit funds were reduced to judgments after plaintiff defaulted in the fringe benefit funds' actions to recover on their claims. Plaintiff does not allege that defendant caused the entry of these judgments. Plaintiff's own failure to respond caused the entry of these judgments. Defendant also points out that the fringe benefit funds suing plaintiff were independent of the unions with which defendant negotiated on its members' behalf and claims noninvolvement in the funds' audits of plaintiff that formed the basis for their collection actions.

Plaintiff also seeks a declaratory judgment that any collective bargaining agreement defendant entered on plaintiff's behalf after June 2006 was without plaintiff's authority and therefore unlawful. C.P.L.R. § 3001. Nevertheless, until plaintiff shows that defendant in fact entered a collective bargaining agreement on plaintiff's behalf after June 2006, plaintiff has failed to allege a controversy between plaintiff and defendant warranting a declaratory judgment. Board of Mgrs. of Honto 88 Condominium v. Red Apple Child Dev. Ctr., a Chinese Sch., 160 A.D.3d 580, 581 (1st Dep't 2018); Touro Coll. v. Novus Univ. Corp., 146 A.D.3d 679, 679-80 (2017); Big Four LLC v. Bond

St. Lofts Condominium, 94 A.D.3d 401, 403 (1st Dep't 2012); BLT Steak, LLC v. 57th St. Dorchester, Inc., 93 A.D.3d 554, 554 (1st Dep't 2012).

III. DEFENDANT'S REASONABLE EXCUSE AND OTHER RELEVANT FACTORS

Finally, defendant demonstrates that its failure to answer timely is attributable to its attorney's inadvertence after filing a notice of appearance and then engaging in discussions with plaintiff's attorney to attempt to resolve plaintiff's claims, without any alert from its attorney that defendant's answer was overdue or that plaintiff would seek a default judgment. C.P.L.R. §§ 2004, 2005. Law office failure constitutes a reasonable excuse for defendant's default. Aegis SMB Fund II, L.P. v. Rosenfeld, 189 A.D.3d 472, 473 (1st Dep't 2020); Maurice v. Maurice, 183 A.D.3d 455, 455 (1st Dep't 2020); US Bank N.A. v. Richards, 155 A.D.3d 522, 523 (1st Dep't 2017); Corcino v. 4303 Baychester, LLC, 147 A.D.3d 467, 467 (1st Dep't 2017). Although defendant's attorney Mark Rosen does not name his associate who failed to carry out his assigned task of filing an answer that Rosen assumed had been carried out, Rosen identifies the associate by detailing his role.

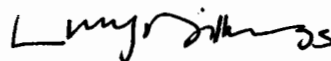
Plaintiff in turn claims no prejudice from the proposed answer that defendant now has filed alleging meritorious defenses as set forth above. Aegis SMB Fund II, L.P. v. Rosenfeld, 189 A.D.3d at 473; 801-803, LLC v. 805 Ninth Ave. Realty Group, LLC,

188 A.D.3d 478, 478 (1st Dep't 2020); Epstein Becker & Green, P.C. v. Samson Mgt. LLC, 188 A.D.3d at 455; US Bank N.A. v. Richards, 155 A.D.3d at 523. Defendant's engagement with plaintiff in response to the complaint and its proposed answer shows the absence of any intent to abandon a defense to this action. Melinda M. v. Anthony J.H., 143 A.D.3d 617, 619 (1st Dep't 2016).

IV. CONCLUSION

Consequently, the court denies plaintiff's motion for a default judgment and considers defendant's answer timely served and filed upon entry of this order. C.P.L.R. §§ 3012(d), 3215. The parties shall appear for a Preliminary Conference via video September 21, 2022, at 12:00 noon.

DATED: August 31, 2022



LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C