

**Lewin v Equity Residential Mgt., LLC**

2022 NY Slip Op 33465(U)

October 14, 2022

Supreme Court, New York County

Docket Number: Index No. 152519/2018

Judge: Debra A. James

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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

SPENCER LEWIN and CALSI VICE,
Plaintiffs,

INDEX NO. 152519/2018

MOTION DATE 03/07/2022

MOTION SEQ. NO. 004

- v -

EQUITY RESIDENTIAL MANAGEMENT, LLC, EQR-EAST
27TH STREET APARTMENTS, LLC, THE ALC GROUP LLC
D/B/A ALC ENVIRONMENTAL, and NEW YORK
INSULATION, INC.,

DECISION + ORDER ON
MOTION

Defendants.

-----X

NEW YORK INSULATION, INC.
Third-Party Plaintiff,

Third-Party
Index No. 595519/2020

-against-

POTOMAC FLOOR COVERING INC. D/B/A MIKE'S
FLOORING COMPANIES

Third-Party Defendant.

-----X

NEW YORK INSULATION, INC.
Second Third-Party Plaintiff,

Second Third-Party
Index No. 595855/2020

-against-

INTERIOR LOGIC GROUP, INC., and INTERIOR LOGIC
GROUP, INC. D/B/A MIKE'S FLOORING COMPANIES

Second Third-Party Defendants.

-----X

NEW YORK INSULATION, INC.
Third Third-Party Plaintiff,

Third Third-Party
Index No. 595398/2022

-against-

CRITERION SUPPLY, INC.

Third Third-Party Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 004) 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 115, 116, 117, 118, 119, 128

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

ORDER

Upon the foregoing documents, it is

ORDERED that the motion brought by third-party plaintiff New York Insulation, Inc for a default judgment against third-party defendant Potomac Floor Covering, Inc D/B/A Mike's Flooring Companies, (motion sequence no 004) is granted, without opposition; and it is further

ORDERED should third party plaintiff New York Insulation, Inc be found liable and cast in damages upon summary judgment or upon trial of this action, judgment on its third party complaint against Potomac Floor Covering, Inc. shall be entered in favor of third party plaintiff New York Insulation, Inc; and it is further

ORDERED that counsel are directed to post on NYSCEF a proposed status conference order or proposed competing status conference orders at least two days before October 20, 2022, 11 AM, on which date and time counsel shall appear via Microsoft Teams, unless such appearance be waived by the court.

DECISION

In this action for breach of warranty of habitability, third-party plaintiff New York Insulation, Inc., moves for a default judgment pursuant to CPLR 3215, based upon the failure of third-party defendant, Potomac Floor Covering, Inc. D/B/A Mike's Flooring Companies, to answer or appear. Plaintiff's motion is unopposed.

On a motion for a default judgment pursuant to CPLR 3215, the moving party must submit proof of service of the summons and complaint, proof of the facts constituting the cause of action, and proof of the defaulting party's failure to appear (see CPLR 3215[f]; Oak Hollow Nursing Ctr. v Stumbo, 117 AD3d 698, 698-699 [2d Dept 2014]). The moving party must also seek a default judgment within one year, which is measured from the default in responding to the complaint. (see CPLR 3215[c]; MTGLQ Invs., L.P. v Shay, 190 AD3d 527, 528 [1st Dept 2021]).

Third-party plaintiff submits the affidavit of Anthony Cardinale, third party plaintiff's Chief Executive Officer, with accompanying exhibits setting for the underlying facts of its cause of action as required by CPLR 3215[f], (NYSCEF Doc No 101). Third party plaintiff also submits proof of service of the summons and complaint, (NYSCEF Doc No 95), proof of service of this motion upon defendant, (NYSCEF Doc No 118, 119), of this motion upon all appearing parties, an affirmation as to

defendant's default pursuant to CPLR 3215[f], (NYSCEF Doc no. 88), and proof of the additional service of the summons upon defendant pursuant to CPLR 3215[g](4), (NYSCEF Doc no. 96). This motion is brought within one year of the default. Additionally, third-party plaintiff filed this motion in accordance with the Decision & Order of this Court, dated, November 9, 2021, (NYSCEF Doc no. 83). Accordingly, third-party plaintiff is entitled to the relief it seeks.

*Debra A. James*

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<u>10/14/2022</u> DATE		<u>DEBRA A. JAMES, J.S.C.</u>
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"/> GRANTED IN PART <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