

Stanziale v Perlson

2022 NY Slip Op 33554(U)

October 17, 2022

Supreme Court, New York County

Docket Number: Index No. 656506/2021

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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BENJAMIN A. STANZIALE, JR. IN HIS CAPACITY AS
CHAPTER 7 TRUSTEE OF PROJECT LAUNDRY OPCO
LLC DBA FAIRWAY LAUNDRY,

Plaintiff,

- v -

CORY PERLSON, BRIANNA EHLAND, CCAG
INVESTMENTS LLC, DANIELLE UNIFORM
MAINTENANCE INC., DANIELLE UNIFORMS INC.,
CARNEGIE VALET CLEANING CORP., DANIELLE
LINEN, INC., and GOTHAM CLEANERS, INC.,

Defendants.

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INDEX NO. 656506/2021

MOTION DATE _____

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97

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

In motion sequence number 003, plaintiff Benjamin A. Stanziale, in his capacity as Chapter 7 Trustee of Project Laundry OPCO LLC d/b/a Fairway Laundry moves, pursuant to CPLR 3215, for a default judgment on its seventh cause of action for conversion against defendant Danielle Uniform Maintenance Inc. (Danielle Maintenance) in the sum of \$501,819.36 with interest from the dates of transfer from March 5, 2019 through September 25, 2019. This motion is unopposed.

In its seventh cause of action, plaintiff alleges that, pursuant to an "Outsourcing Agreement, Project Laundry was entitled to receive the funds paid by Mevram for Project Laundry services provided to Mevram's client hotels," but instead Mevram paid Danielle Maintenance \$501,819.36 for the work performed by Project Laundry and

Danielle Maintenance failed to remit those monies to Project Laundry. (NYSCEF 86, Summons and Complaint ¶¶ 209, 73, 75.)

On May 10, 2022, the court denied plaintiff's previous request for this relief on the ground that allegations supporting this claim were based on information and belief and were not sufficient proof of this claim. (NYSCEF 90, Amended Decision and Order [Mot. Seq. No. 002].) The court also held the bank statements submitted in support of the motion were insufficient to show that Danielle Maintenance directed nonparty Mevram Services LLC (Mevram) to pay Danielle Maintenance instead of Project Laundry. (*Id.*)

"On a motion for a default judgment under CPLR 3215 based upon a failure to answer the complaint, a plaintiff demonstrates entitlement to a default judgment against a defendant by submitting: (1) proof of service of the summons and complaint; (2) proof of the facts constituting its claim; and (3) proof of the defendant's default in answering or appearing." (*Medina v Sheng Hui Realty LLC*, 2018 WL 2136441, *6-7 [Sup Ct, NY County 2018] [citations omitted].)

Proof of Service and Proof of Default

Plaintiff submits proof that Danielle Maintenance was served with the summons and verified complaint (NYSCEF 54, Affidavit of Service; NYSCEF 55, Affidavit of Additional Mailings.) Danielle Maintenance has failed to answer the verified complaint.

Proof of Claim

Plaintiff has sufficiently remedied the defects of his previous motion and now supports the basis of the allegations plead upon information and belief. In support of this motion, plaintiff submits an affidavit from Giulio Kiri, the managing member of

Mevram, who avers that, even though nonparty Carnegie Linen Services, Inc. provided linen laundry services to Mevram, Carnegie Linen instructed payment to Danielle Maintenance. (NYSCEF 91, Kiri Aff ¶ 5.) Kiri affirms that Project Laundry began to provide the services instead of Carnegie Linen, but Mevram paid continued to pay Carnegie Linen's invoices to Danielle Maintenance. (*Id.* ¶ 6.) Kiri submits a spreadsheet with his affidavit demonstrating Mevram's payments made for Project Laundry services - \$341,962.06 paid to Danielle Maintenance and \$175,605.90 paid to Danielle Maintenance. This is also supported by the bank statements submitted.

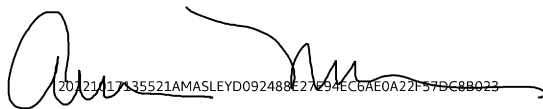
Further, plaintiff alleges that Project Laundry provided linen services to Mevram pursuant to a written outsourcing agreement with Carnegie Valet and Carnegie Valet was supposed to either have Mevram pay Project Laundry directly or invoice Mevram and collect Mevram payments and remit them to Project Laundry. (NYSCEF 86, Summons and Complaint ¶¶ 38-39.) "Pursuant to the Outsourcing Agreement, Project Laundry was entitled to receive the funds paid by Mevram for Project Laundry services provided to Mevram's client hotels" within three days of payment, but the money was instead sent to Danielle Maintenance who did not remit it to plaintiff. (*Id.* ¶¶ 209, 43, 73-75.)

"Conversion occurs when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person's right of possession. It is well settled that an action will lie for the conversion of money where there is a specific, identifiable fund and an obligation to return or otherwise treat in a particular manner the specific fund in question." (*Family Health Mgt., LLC v Rohan Devs., LLC*, 207 AD3d 136, 139 [1st Dept 2022] [internal

quotation marks and citations omitted].) Plaintiff's allegations coupled with Kiri's affidavit and supporting evidence are enough proof of claim.

Accordingly, it is

ORDERED that the plaintiff's motion for a default judgment is granted, and the Clerk of the Court is directed to enter judgment in favor of plaintiff Benjamin A. Stanziale, in his capacity as Chapter 7 Trustee of Project Laundry OPCO LLC d/b/a Fairway Laundry, having an address at _____, against defendant Danielle Uniform Maintenance Inc., having an address of _____ in the sum of \$501,819.36 together with interest at the rate of 9% per annum from the date of March 5, 2019 until the date of the decision and order on this motion, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs for a total sum of \$ _____.



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10/17/2022
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: