

**Premium Merchant Funding 18, LLC v Inocente Holdings, LLC**

2022 NY Slip Op 33629(U)

October 21, 2022

Supreme Court, New York County

Docket Number: Index No. 651292/2022

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

*Justice*

-----X

PREMIUM MERCHANT FUNDING 18, LLC,

Plaintiff,

- v -

INOCENTE HOLDINGS, LLC, HAL INOCENTE

Defendants.

-----X

INDEX NO. 651292/2022

MOTION DATE 10/19/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

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

Plaintiff's motion for a default judgment is granted in part.

**Background**

Plaintiff seeks recovery related to a water treatment system ordered by defendant Inocente Holdings, LLC ("Inocente"). Plaintiff explains that its predecessor issued an invoice to Inocente and that plaintiff's predecessor assigned its rights, title, and interest with respect to the invoice to plaintiff before it became due.

Plaintiff acknowledges that defendant made partial payments but still owe \$428,500 to plaintiff.

In opposition, defendants claim that they believed that plaintiff's predecessor ("ADS") would pay the remaining amount to plaintiff. Mr. Inocente swears that he called the CEO for ADS and that he assured Mr. Inocente that the matter would be handled. Defendants explain that this is why they did not answer the complaint.

In reply, plaintiff contends that defendants did not cite a reasonable excuse for not timely answering the complaint.

### **Discussion**

The question for this Court is whether defendants established a reasonable excuse for not timely answering. In support of their claim that they thought ADS was going to pay the amount owed by defendants, they attach an email chain. One of those emails appears to be from the CEO of ADS (plaintiff's predecessor-in-interest) to plaintiff's attorney. It is dated June 23, 2022 and states:

“On behalf of Inocente Holdings LLC case, cc'd is Inocente Holdings LLC attorney, as you know a client of ours Inocente Holdings has not paid the full amount due for an invoice you have funded. That said, they have partially paid Premium Merchant Funding. Advantageous Systems LLC (ADS) has also partially paid the factored amount to Premium Merchant Funding. Inocente Holdings is a vital client for ADS and very important for our strategic growth that the VC would like us to retain. In an effort to ensure the VC raise is completed smoothly and funds in hand, we are proposing the following: While I know you have filed suit against Inocente Holdings, we would like to assure you that ADS will be paying the remaining amount due of the funds owed to you once we close our VC round.” (NYSCEF Doc. No. 22).

The Court finds that this email does not constitute a reasonable excuse for why defendants did not answer the complaint. At best, this email is a settlement proposal to plaintiff from a non-party and it contains a condition precedent (that ADS close on a VC round before it will make the payment). But defendant did not submit anything to show that *plaintiff* agreed to this suggestion, that ADS made the payment or that they did anything to follow up on this alleged proposal by ADS. Certainly, defendants might understandably be upset with ADS for promising to pay plaintiff and evidently not following through (although the Court makes no finding about the legal implications of the email cited above).

In other words, the Court is unable to find that defendants raised a reasonable excuse by pointing to an email from June 23, 2022 where ADS suggested it might pay plaintiff what was owed. There is no indication that defendant ever followed up with ADS or plaintiff to ensure that this significant payment was paid. And that is the real issue- defendants do not dispute that the money is still owed and that the time for them to answer has long passed. Moreover, defendants did not cross-move for leave to file a late answer or even bother to include a proposed answer.

And plaintiff did what it was supposed to do. It has a valid assignment of this debt and sought to recover the amount owed. Defendants should not be able to drag this case out based on a vague promise by an entity that is not a party to this case and where there is no indication that plaintiff ever agreed to such a resolution. Of course, had the third party paid, there would be no need for this motion.

However, the Court declines to grant the motion to the extent it seeks relief against the individual defendant. Neither the moving papers nor the reply papers submitted by plaintiff explain why Mr. Inocente is liable for the water treatment system purchase. The invoice included (NYSCEF Doc. No. 11) does not mention Mr. Inocente at all. The only reference to this defendant's potential liability is a single reference in the unverified complaint that Mr. Inocente is a guarantor (NYSCEF Doc. No. 1, ¶ 5). But nothing was submitted to support that contention. Therefore, the Court severs and dismisses the case against the individual defendant.


The Court also denies the request for legal fees as the moving papers did not cite a basis, such as a provision in an agreement, to support this requested relief.

Accordingly, it is hereby

ORDERED that plaintiff’s motion for a default judgment is granted only to the extent that the Clerk is directed to enter judgment in favor of plaintiff and against defendant Inocente Holdings, LLC in the amount of \$428,500 plus interest from November 2, 2021 along with costs and disbursements upon presentation of proper papers therefor; and it is further

ORDERED that the case is severed and dismissed as against defendant Hale Inocente s/h/a as Hal Inocente as plaintiff did not meet its burden to show this defendant was a party to the contract; and it is further

ORDERED that plaintiff’s request for legal fees is denied.

<u>10/21/2022</u>					
DATE			ARLENE P. BLUTH, J.S.C.		
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE