

Mammoet USA N., Inc. v Durr Mech. Constr., Inc.

2022 NY Slip Op 34116(U)

December 5, 2022

Supreme Court, New York County

Docket Number: Index No. 653014/2018

Judge: Robert R. Reed

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 43

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MAMMOET USA NORTH, INC.,

Plaintiff,

- v -

DURR MECHANICAL CONSTRUCTION, INC., MEGRANT CORPORATION, DURR-MEGRANT A JV

Defendant.

INDEX NO. 653014/2018

MOTION DATE 02/08/2022

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

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HON. ROBERT R. REED:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89

were read on this motion for

JUDGMENT - SUMMARY

Plaintiff Mammoet USA North, Inc. moves for an order pursuant to CPLR 3212 granting summary judgment in favor of plaintiff on its first and second causes of action against defendant Durr Megrant a JV (“Durr Megrant”).

Background

Plaintiff’s first cause of action is for breach of contract against all defendants. Plaintiff’s second cause of action is for unjust enrichment against all defendants and is based on the same set of facts as plaintiff’s breach of contract claim. Plaintiff’s third and fourth causes of action do not involve defendant Durr Megrant.

On September 12, 2018, Durr Megrant filed its answer and affirmative defenses to plaintiff’s complaint. On September 14, 2018, defendant Durr Mechanical Construction, Inc. (“Durr Mechanical”) filed its answer with affirmative defenses to the complaint and crossclaims against defendant Megrant Corporation (“Megrant”).

Megrant failed to answer, appear, or otherwise respond to the complaint. This court granted a motion by plaintiff for default judgment against Megrant (NYSCEF doc. no. 35).

In January 2019, Durr Mechanical filed a notice with the court that Durr Mechanical had filed for bankruptcy and the action was automatically stayed against Durr Mechanical (NYSCEF doc. no. 18).

On January 8, 2020, this court granted a motion by Durr Megrant's counsel to withdraw as attorney for Durr Megrant (NYSCEF doc. no. 54). Durr Megrant was ordered to retain new counsel within 30 days of the mailing of notice, which occurred on December 27, 2019. There has been no appearance by any new counsel for Durr Megrant.

On March 22, 2021, plaintiff filed its note of issue. On May 21, 2021, plaintiff filed this motion for summary judgment against Durr Megrant. No opposition to this motion has been filed.

Discussion

“The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law” (*Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 [1st Dept 2007]). The movant's burden is “heavy,” and “on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party” (*William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013] [internal quotation marks and citation omitted]). Upon a proffer of evidence establishing a prima facie case by the movant, “the party opposing a motion for summary judgment bears the burden of producing evidentiary proof in admissible form sufficient to require a trial of material questions of fact” (*People v Grasso*, 50 AD3d 535, 545 [1st Dept 2008] [internal quotation marks and citation omitted]). “A motion for summary judgment should

not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility” (*Ruiz v Griffin*, 71 AD3d 1112, 1115 [2d Dept 2010] [internal quotation marks and citation omitted]).

The complaint states that Durr Megrant is a joint venture of defendants Durr-Mechanical and Megrant. Plaintiff asserts breach of contract and unjust enrichment claims against Durr Megrant. According to the complaint, plaintiff Mammoet and defendant Durr Megrant entered into a series of agreements for Mammoet to provide steel, materials, assistance, and equipment, for the construction of the Sewaren Project, a power plant facility. The complaint identifies the terms of the agreements, alleges that plaintiff performed, asserts that Durr Megrant failed to pay for goods and services rendered, resulting in damages to plaintiff.

Peter T. Ashton, President of Mammoet USA North Inc., submitted an affidavit based upon his personal knowledge and the records maintained for the Sewaren Project (NYSCEF doc. no. 88). Ashton affirmed the allegations of the complaint and affirmed the accuracy of the invoices and exhibits provided in support of this motion and confirmed that they are maintained in the ordinary course of plaintiff’s business. According to Ashton, defendant Durr-Megrant is owed \$2,374,095.39. This is sufficient proof of the goods sold and delivered and of an account stated.

Accordingly, it is hereby

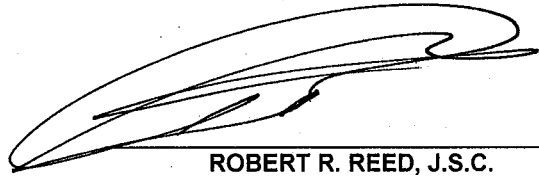
ORDERED that the plaintiff’s motion for summary judgment on the first and second causes of action as against Durr Megrant is granted, without opposition, and upon the default of Durr Megrant; and it is further

ADJUDGED and DECLARED that plaintiff is entitled judgment in the principal amount of \$2,374,095.39, with prejudgment interest calculated from June 15, 2018, through the date of this order, with costs and disbursements as taxed by the clerk; and it is further

ORDERED that, within 20 days of the date this order is filed, the plaintiff shall submit a proposed judgment as against defendants Durr-Megrant and Megrant Corporation, in accordance with this order and the order of the Hon. O. Peter Sherwood dated October 30, 2019.

12/05/2022

DATE


ROBERT R. REED, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE