

**Skyline Steel, LLC v Fitzcon Constr. GC, Inc.**

2023 NY Slip Op 30361(U)

February 3, 2023

Supreme Court, New York County

Docket Number: Index No. 158269/2021

Judge: Mary V. Rosado

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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. MARY V. ROSADO** PART **33M**

*Justice*

-----X

SKYLINE STEEL, LLC,

Plaintiff,

INDEX NO. 158269/2021

MOTION DATE 10/12/2022

MOTION SEQ. NO. 001

- v -

FITZCON CONSTRUCTION GC, INC., JEMZN  
CONSTRUCTION, INC., FITZCON CONSTRUCTION/REN  
CORP., CONOR QUINN, LIAM O'SULLIVAN

Defendant.

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, and without any opposition, Plaintiff Skyline Steel, LLC's ("Plaintiff") motion seeking a default judgment against Defendants Fitzcon Construction GC, Inc., JEMZN Construction, Inc., Fitzcon Construction/REN Corp., Connor Quinn ("Quinn"), and an order of severance against Defendant Liam O'Sullivan ("O'Sullivan") is granted in part and denied in part.

An applicant for default judgment against a defendant must submit: (i) proof of service of the summons and complaint, (ii) proof of the facts constituting the claim, and (iii) proof of the defaulting defendant's failure to answer or appear (*PV Holding Corp v AB Quality Health Supply Corp*, 189 AD3d 645 [1st Dept 2020]). Affidavits submitted in support of default judgment only need to allege enough facts to allow a court to assess where a viable cause of action exists (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). The Court is mindful that "defaulters are deemed to have admitted all factual allegations in the complaint and all reasonable inferences that flow from them (*Al Fayed v Barak*, 39 AD3d 371, 372 [1st Dept 2007]).

Here, Defendants Fitzon Construction GC, Inc., JEMZN Construction, Inc., Fitzon Construction/REN Corp. were all served via the Secretary of State on September 14, 2021 (NYSCEF Docs. 9-11). Defendant Quinn was served via a co-worker at his place of business on September 13, 2021 (NYSCEF Doc. 4). Additional notice pursuant to BCL § 306 was served on Defendants Fitzon Construction GC, Inc., JEMZN Construction, Inc., Fitzon Construction/REN Corp. on September 23, 2021 (NYSCEF Doc. 7). Quinn was also additionally served via first class mail on September 23, 2021 (NYSCEF Doc. 8). As such, the service requirements of CPLR § 3215(g) have been met.

However, the Court finds that Plaintiff has not satisfied CPLR § 3215 (f) as to some Defendants. Plaintiff's Complaint seeks to recoup damages allegedly arising from a breach of contract and a failure to pay certain invoices. The contract was only executed between Plaintiff and Jemzn Construction (NYSCEF Doc. 16) and invoices were only sent to "Fitzcon Construction" (NYSCEF Doc. 15). Defendant O'Sullivan signed the contract as president of Jemzn Construction (NYSCEF Doc. 16). Although the Complaint alleges alter-ego liability, there are no facts presented in the affidavit of merit or other exhibits which provide any basis for applying alter-ego liability on Quinn (*see generally* NYSCEF Doc. 13). As such, while the affidavit of merit, invoices, and agreement support an entry of default judgment against Defendants Fitzon Construction GC, Inc., JEMZN Construction, Inc., Fitzon Construction/REN Corp., the Court is unable at this time to grant default judgment against Defendant Quinn.

Further, although Plaintiff seeks attorneys' fees in its third cause of action, there are no legal fee invoices, nor an affirmation of services annexed to the moving papers. As such, this Court is unable to grant an award of attorneys' fees on default judgment. However, the Court will allow

Plaintiff to submit an affirmation of services and invoices in support of its application for attorneys' fees.

Finally, Plaintiff seeks to sever this action against Defendant O'Sullivan pursuant to CPLR § 3215(d). However, CPLR 3215(d) only applies to the extent it is not limited by CPLR § 3215(c). CPLR § 3215(c) provides that "if the plaintiff fails to take proceedings for the entry of judgment within one year after the default, the court shall not enter judgment but shall dismiss the complaint as abandoned, without costs, upon its own initiative or on motion, unless sufficient cause is shown why the complaint should not be dismissed." O'Sullivan has been in default for well over a year, yet, rather than seeking default against him, Plaintiff for some reason is seeking to sever the action to proceed against him. The Court sees no need to sever the claims against O'Sullivan. Rather, as the Court is providing an opportunity to submit papers concerning attorneys' fees owed, the Court likewise provides Plaintiff an opportunity to explain why its Complaint against O'Sullivan should not be dismissed as abandoned. If Plaintiff seeks to renew default judgment against Quinn, it should also submit sufficient factual evidence which would allow this Court to impose alter ego liability on O'Sullivan and Quinn.

Accordingly, it is hereby,

ORDERED that Plaintiff Skyline Steel, LLC's motion seeking a default judgment against Defendant Connor Quinn is denied without prejudice for failure to provide sufficient facts to impose alter ego liability, with leave to renew on or before April 3, 2023. Should Plaintiff not renew its motion for default judgment against Defendant Connor Quinn, its Complaint against Defendant Connor Quinn may be considered abandoned; and it is further

ORDERED that Plaintiff Skyline Steel, LLC's motion seeking to sever its Complaint against Defendant Liam O'Sullivan is denied without prejudice, with leave to on or before April

3, 2023. Upon renewal, Plaintiff should provide sufficient cause pursuant to CPLR § 3215(c) as to why its Complaint against Defendant Liam O'Sullivan should not be dismissed as abandoned. Should Plaintiff not renew its motion to sever its Complaint against Defendant Liam O'Sullivan, its Complaint against Defendant Liam O'Sullivan may be considered abandoned; and it is further

ORDERED that Plaintiff Skyline Steel, LLC's motion for default judgment against Defendants Fitzcon Construction GC, Inc., JEMZN Construction, Inc., Fitzcon Construction/REN Corp. is granted without opposition, and the Clerk of the Court is directed to enter judgment, jointly and severally, in favor of Plaintiff Skyline Steel, LLC and against Defendants Fitzcon Construction GC, Inc., JEMZN Construction, Inc., Fitzcon Construction/REN Corp. on Plaintiff Skyline Steel, LLC's First and Second causes of action alleging breach of contract and account stated in the amount of \$87,629.14, with annual interest of 18%, from September 1, 2021 until entry of judgment, as calculated by the Clerk of the Court, along with costs and disbursements, as taxed by the Clerk; and it is further

ORDEERD that on or before April 3, 2023, Plaintiff Skyline Steel, LLC is directed to submit an affirmation of service and legal invoices in support of its third cause of action seeking attorneys' fees via NYSCEF and e-mail to [SFC-Part33-Clerk@nycourts.gov](mailto:SFC-Part33-Clerk@nycourts.gov). Failure to abide by this Order may result in waiver of Plaintiff's claim for attorneys' fees; and it is further

*[The remainder of this page is intentionally left blank.]*

ORDERED that within 10 (ten) days of entry, counsel for Plaintiff Skyline Steel, LLC shall serve a copy of this Decision and Order, with notice of entry, via first class mail, on all Defendants at their last known business address; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

2/3/2023  
DATE

Mary V Rosado  
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE