

King C Steel Works LLC v Saga Mgt. Group, Inc.

2023 NY Slip Op 30666(U)

March 7, 2023

Supreme Court, New York County

Docket Number: Index No. 158033/2022

Judge: Nancy M. Bannon

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NANCY M. BANNON PART 42

Justice

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KING C STEEL WORKS LLC,

Plaintiff,

- v -

INDEX NO. 158033/2022

MOTION DATE 2/3/2023

MOTION SEQ. NO. 001

SAGA MANAGEMENT GROUP, INC., 795 FIFTH AVENUE
CORP., "ABC COMPANY NO. 1", "JOHN DOE NO. 1"

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15,

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

In this action, *inter alia*, to foreclose a mechanic's lien, the plaintiff, King C Steel Works, LLC, seeks to recover \$26,534.63 allegedly owed for labor and materials provided to the defendants, Saga Management Group, Inc. (Saga), the general contractor, and 795 Fifth Avenue Corp. (795 Fifth), owner of real property located at 2 East 61st Street in Manhattan, Block 1375, Lot 67, as part of a construction project on that property. The defendants failed to answer. The plaintiff now moves pursuant to CPLR 3215 for leave to enter a default judgment. No opposition is submitted. The motion is granted in part.

"On a motion for leave to enter a default judgment pursuant to CPLR 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party's failure to answer or appear (see CPLR 3215[f]; Allstate Ins. Co. v Austin, 48 AD3d 720, 720)." Atlantic Cas. Ins. Co. v RJNJ Services, Inc. 89 AD3d 649 (2nd Dept. 2011). The plaintiff must also comply with the additional notice requirement of CPLR 3215(g). The proof submitted must establish a *prima facie* case. See Guzetti v City of New York, *supra*; Silberstein v Presbyterian Hosp., 95 AD2d 773 (2nd Dept. 1983). CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown." Joosten v Gale, 129 AD2d 531, 535 (1st

Dept 1987). As such, “[w]here a valid cause of action is not stated, the party moving for a default judgment is not entitled to the requested relief, even on default.” Green v. Dolphy Constr. Co. Inc., 187 AD2d 635, 636 (2nd Dept. 1992).

In its complaint, which is verified by Eliran Galapo, a principal of the plaintiff, the plaintiff alleges that it entered into a subcontract with Sage in September 2021 pursuant to which it provided labor and materials to Saga for the project, *i.e.*, stairs and other structural steel materials, in October and November of 2021 for which it is owed \$26,534.63. The plaintiff now seeks to foreclose upon the mechanic’s lien it filed in that amount against the property. The mechanic’s lien was filed on March 22, 2022, naming 795 Fifth as the property owner and Saga as the party to whom the lienor furnished labor and materials. This action to foreclose the mechanic’s lien was commenced in September 2022, and a Notice of Pendency was filed.

Lien Law § 10(1) provides that a notice of a mechanic’s lien may be filed by a contractor or subcontractor at any time during the progress of the work and the furnishing of the materials, or within eight months after the completion of the contract. Lien Law § 11-b requires a lienor to serve notice of the lien upon the general contractor by certified mail. Mechanic’s liens may be enforced against the property specified in the notice of lien and against any person liable for the debt upon which the lien is founded in the supreme court or in a county court with jurisdiction. See Lien Law §§ 24, 41. The plaintiff’s submissions sufficiently establish the first cause of action to foreclose the mechanic’s lien and meet the requirements of CPLR 3215(f) and (g). Having failed to answer, the defendants are “deemed to have admitted all factual allegations in the complaint and all reasonable inferences that flow from them.” Woodson v Mendon Leasing Corp., 100 NY2d 62, 70-71 (2003).

In addition to the first cause of action, the mechanic’s lien claim, which is asserted against both defendants, the plaintiff asserts six additional causes of action against defendant Saga alone, including breach of contract, unjust enrichment, account stated and quantum meruit, all of which seek the same relief, \$26,534.63. To be sure, Lien Law § 54 provides that where a contractor is not able to foreclose on its mechanic’s lien, “a personal judgment to be obtained where the complaint contains allegations sufficient to state a cause of action in contract.” 240-35 Assocs. v Major Builders Corp., 234 AD2d at 234 (1st Dept. 1996). Here, however, the plaintiff need not establish any of the remaining causes of action seeking that

amount since it succeeds on its first cause of action, to foreclose the mechanic's lien, and all but one of the additional causes of action seek the same damages.

The complaint also alleges a violation of General Business Law § 756-a, which requires prompt payment of invoices sent by contractors for work performed pursuant to a construction contract, and a violation of Article 3-A of the Lien Law by diversion of trust funds, which also seek \$26,534.63. The plaintiff does not, in these motion papers, establish these causes of action, *prima facie*, as required by CLR 3215(f). To establish a GBL § 756-a claim, the plaintiff was required to show that it delivered to Saga "an invoice and all contractually required documentation" and that Saga then failed to approve or disapprove the invoice within 12 days. GBL § 756-a(2)(a)(i). The plaintiff makes no such allegations in the complaint and submits no contract or invoices sent to Saga. Thus, even though the plaintiff established a failure to pay the lien amount, it failed to establish the particular requirements of that statute.

"Lien Law article 3-A 'was designed to create trust funds out of certain construction payments or funds to assure payment of subcontractors, suppliers, architects, engineers, laborers, as well as specified taxes and expenses of construction (Caristo Constr. Corp. v Diners Fin. Corp., 21 NY2d 507, 512).' Lien Law article 3-A mandates that once a trust comes into existence its funds may not be diverted for non-trust purposes.... (Matter of RLI Ins. Co. v New York State Dept. of Labor, 97 NY2d 256)." Aspro Mech. Contracting, Inc. v Fleet Bank, N.A., 293 AD2d 97, 99 (2nd Dept. 2002). In regard to its Article 3-A claim, the plaintiff again seeks \$26,534.63 but also seeks (1) a declaration that defendant Sage is the trustee of the funds sought, (2) an order directing an accounting by Saga of all monies received on the project and (3) statutory attorney's fees, as well as "exemplary damages and punitive damages." While Saga, as the general contractor, may well be considered a statutory trustee, the proof submitted does not support a finding that any funds were diverted or the extensive relief sought by the plaintiff. Nothing more than the bare allegations of the complaint is submitted in that regard, and those allegations merely accuse Saga of committing "larceny", acting with "reckless or disregard of plaintiff's rights" and engaging in a "deceptive and wrongful scheme and pattern affecting the public welfare and legal rights." Being without detail or any additional factual or legal support, the accusations are not enough to invoke the statute. It should be noted in particular that punitive damages may be awarded only "where the wrong complained of is morally culpable, or is actuated by evil and reprehensible motives, not only to punish the defendant but to deter him, and others who might otherwise be so prompted, from indulging in similar conduct in the future."

Walker v Sheldon, 10 NY2d 401, 404 (1961); see Marinaccio v Town of Clarence, 20 NY3d 506 (2013). For that reason, “punitive damages are not recoverable for an ordinary breach of contract.” Rocanova v Equitable Life Assur. Soc. of U.S., 83 NY2d 603, 613 (1994). Punitive damages are not appropriate here.

As defendants “ABC Company No. 1” and “John Doe No. 1” remain unidentified, the complaint is dismissed as against those defendants.

Since no opposition was filed, the plaintiff’s reply is improper and is not considered.

Accordingly, and upon the foregoing papers, it is

ORDERED that the plaintiff’s motion pursuant to CPLR 3215 for leave to enter a default judgment is granted as to the first cause of action seeking to foreclose a mechanic’s lien, entered in the Office of the County Clerk, New York County, on March 22, 2022, against the real property located at 2 East 61st Street, N.Y., N.Y., Block 1375, Lot 67, and the motion is otherwise denied, and it is further

ORDERED that the Clerk shall enter judgment in favor of the plaintiff and against defendants Saga Management Group, Inc. and 795 Fifth Avenue Corp., jointly and severally, in the sum of \$26,534.63, plus costs and statutory interest from March 22, 2022, and it is further

ORDERED that the action is severed and discontinued as against the unidentified defendants “ABC Company No. 1” and “John Doe No. 1”, and it is further

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the Decision and Order of the court.

3/7/2023
DATE


NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART