

American Home Assur. Co. v SBP N.Y., LLC
2023 NY Slip Op 31543(U)
May 5, 2023
Supreme Court, New York County
Docket Number: Index No. 152177/2019
Judge: Sabrina Kraus
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. SABRINA KRAUS

PART

57TR

Justice

-----X

AMERICAN HOME ASSURANCE COMPANY, ZURICH
AMERICAN INSURANCE COMPANY, CONTINENTAL
CASUALTY COMPANY, WESTPORT INSURANCE
CORPORATION AS SUBROGEE OF 432 PARK AVENUE
CONDOMINIUM,

Plaintiff,

- v -

SBP NEW YORK, LLC, PEMBROOKE & IVES INC., STH
PAINTING, INC., FRESCO DECORATIVE PAINTING,
INC., RAEL AUTOMATIC SPRINKLER CO., INC., LEWIS A.
SANDERS, ALICE SANDERS, REN INTERIORS, LLC,

Defendant.

-----X

STH PAINTING, INC.

Plaintiff,

-against-

TRZASKA CONSTRUCTION CORP.

Defendant.

-----X

SBP NEW YORK, LLC

Plaintiff,

-against-

I.J. PEISER'S SONS, INC.

Defendant.

-----X

DECISION + ORDER ON MOTION

Third-Party
Index No. 595904/2022

Second Third-Party
Index No. 595355/2023

The following e-filed documents, listed by NYSCEF document number (Motion 003) 205, 206, 207, 208,
209, 210, 211

were read on this motion to/for

JUDGMENT - DEFAULT

Plaintiff commenced this action seeking reimbursement for sums paid out to Plaintiff's subrogors as the result of a fire which occurred on April 1, 2018, in the Penthouse of 432 Park Avenue, New York, NY.

Plaintiff American Home Assurance Company (AHAC) was the Lead Underwriter for The Market of Insurers that were the property insurers for 432 Park Avenue Condominium, the Condominium Association for the residential property located at 432 Park Avenue, New York, NY. Plaintiff's Complaint alleges that, on or about April 1, 2018, while the Renovation Project was ongoing in Unit 88 of the property, a fire occurred within Unit 88, which resulted in The Market of Insurers, pursuant to its applicable policy of insurance, having to pay for the damages to the property incurred by the 432 Park Avenue Condominium Association.

Defendant/Third – Party Plaintiff STH Painting, Inc., filed a Third Party action as against Trzaska Construction Corp on November 14, 2022, alleging that Trzaska, its employees and/or agents, were performing work, in the Penthouse prior to April 1, 2018, and were responsible for trash removal in the Penthouse prior to April 1, 2018. Defendant/Second Third-Party Plaintiff, STH, asserts if it is held liable to Plaintiff, in any respect, such liability will be due solely to the negligence and general failure of Trzaska in not removing trash or improperly directing, controlling, and supervising the ongoing work in the Penthouse prior to April 1, 2018.

The affidavit of service indicates service on the Secretary of State of the state of New York on January 4, 2023.

Trzaska has failed to appear or file an answer and the time in which to do so has not been extended.

On April 28, 2023, Defendant/Third-Party Plaintiff S.T.H. Painting, Inc. moved for a default judgment pursuant to C.P.L.R. § 3215(a), as against Trzaska. Trzaska has failed to appear or submit opposition.

CPLR § 3215(a) provides, in pertinent part, that “[w]hen a defendant has failed to appear, plead or proceed to trial... the plaintiff may seek a default judgment against [it].” “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 default in answering or appearing.” *Atlantic Cas. Ins. Co. v RJNJ Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011).

In support of the motion, Defendant/Third-Party Plaintiff submits the affirmation of Stephanie B. Gitnik, Esq.; a copy of the initial summons and complaint; answer by Defendant/Third-Party Plaintiff; amended complaint and amended answer; affidavit of Jovanny Narvaez, owner of STH Painting Inc; copy of the Third Party summons and complain and affidavit of service of the same; and a good faith letter to Trzaska.

Plaintiff has established *prima facie* entitlement to a default judgment as to Trzaska Construction Corp Wherefore, it is hereby

ORDERED that Defendant/Third-Party Plaintiff motion seeking a default judgment against Trzaska Construction Corp is granted; and it is further

ORDERED damages are to be determined at trial; and it is further

ORDERED that, within 20 days from entry of this order, movant shall serve a copy of this order with notice of entry on all parties and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the court.

<u>5/5/2023</u>			
DATE		SABRINA KRAUS, 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