

Chubb Natl. Ins. Co. v SBP Homes

2023 NY Slip Op 31623(U)

May 11, 2023

Supreme Court, New York County

Docket Number: Index No. 152236/2020

Judge: Sabrina Kraus

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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. SABRINA KRAUS PART 57TR

Justice

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CHUBB NATIONAL INSURANCE COMPANY A/S/O LEWIS
A. SANDERS AND ALICE SANDERS,

Plaintiff,

INDEX NO. 152236/2020

MOTION DATE 07/09/2023

MOTION SEQ. NO. 001

- v -

SBP HOMES D/B/A SBP NEW YORK LLC, PEMBROOKE &
IVES INC., STH PAINTING, INC., REN INTERIORS,
LLC, FRESCO DECORATIVE PAINTING, INC., RAEL
AUTOMATIC SPRINKLER CO., INC.,

Defendant.

**DECISION + ORDER ON
MOTION**

STH PAINTING, INC.

Plaintiff,

-against-

TRZASKA CONSTRUCTION CORP.

Defendant.

Third-Party
Index No. 595906/2022

SBP HOMES D/B/A SBP NEW YORK LLC

Plaintiff,

-against-

I.J. PEISER'S SONS, INC.

Defendant.

Second Third-Party
Index No. 595357/2023

The following e-filed documents, listed by NYSCEF document number (Motion 001) 65, 66, 67, 68, 69,
70, 71

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.

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

Defendant/Second Third-Party Plaintiff has established *prima facie* entitlement to a default judgment as to Trzaska Construction Corp Wherefore, it is hereby


ORDERED that Defendant/Second 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>5/11/2023</u> DATE	 _____ SABRINA KRAUS, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE