

**Privilege Underwriters Reciprocal Exch. v SBP N.Y.  
LLC**

2023 NY Slip Op 31625(U)

May 11, 2023

Supreme Court, New York County

Docket Number: Index No. 152866/2021

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*

-----X

**INDEX NO. 152866/2021**

PRIVILEGE UNDERWRITERS RECIPROCAL EXCHANGE  
AS SUBROGEE OF THOMAS PETERFFY AND 432 PARK  
AVENUE #84A LTD., THOMAS PETERFFY, 432 PARK  
AVENUE #84A LTD.,

**MOTION DATE 07/09/2023**

**MOTION SEQ. NO. 001**

Plaintiff,

- v -

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

**DECISION + ORDER ON  
MOTION**

Defendant.

-----X

STH PAINTING, INC.

Third-Party  
Index No. 595908/2022

Plaintiff,

-against-

TRZASKA CONSTRUCTION CORP.

Defendant.

-----X

SBP NEW YORK LLC

Second Third-Party  
Index No. 595354/2023

Plaintiff,

-against-

I.J. PEISER'S SONS, INC.

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 56, 57, 58, 59, 60, 61, 62

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.

Plaintiffs' alleges that Peterffy and/or Plaintiff 432 Park owned, occupied, controlled and/or otherwise had an insurable interest in Apartment Unit #84A of the building located at 432 Park Avenue, New York, New York 10022. During the early hours of April 1, 2018, as a result of ongoing work, there was a fire in Unit 88, which resulted in damages to the Peterffy Premises and the Plaintiffs.

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; a revised proposal and a subcontract and revised proposal.

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

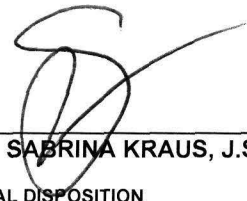
ORDERED that Defendant/Third-Party Plaintiff motion seeking a default judgment against Trzaska Construction Corp is granted; and it is further

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](http://www.nycourts.gov/supctmanh)).

This constitutes the decision and order of the court.

5/11/2023 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	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE