Gilbane Residential Constr. LLC v Allied World Ins. Co.
2023 NY Slip Op 32437(U)
July 13, 2023
Supreme Court, New York County
Docket Number: Index No. 651096/2021
Judge: Robert R. Reed

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 43

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GILBANE RESIDENTIAL CONSTRUCTION LLC,

Plaintiff,

- v -

ALLIED WORLD INSURANCE COMPANY, PARKSIDE CONSTRUCTION BUILDERS CORP.

Defendant.

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INDEX NO. 651096/2021

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

HON. ROBERT R. REED:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21, 22

were read on this motion to/for JUDGMENT - DEFAULT

In this construction dispute, plaintiff Gilbane Residential Construction LLC ("Gilbane") moves, pursuant to CPLR 3215, for entry of a default judgment on liability against defendant Parkside Construction Builders Corp ("Parkside").

BACKGROUND

In April of 2015, Gilbane and Park Place Partners entered into a Construction Management Agreement for the construction project known as 45 Park Place, a high-rise residential condominium building located at 43-47 Park Place, New York, New York. On or about June 10, 2016, Gilbane and Parkside entered into a Trade Contract agreement for the project, wherein Parkside agreed to be the super structure concrete trade contractor for the project (the "subcontract"). Allied World Insurance Company, under the same subcontract, issued surety bonds for the project.

On or about May 31, 2018, Parkside acknowledged and memorialized in a letter that it would be unable to complete its obligations under the subcontract, and admitted that it was in default of the subcontract. Pursuant to this admission by Parkside, Gilbane terminated Parkside under the subcontract for cause, and made demand upon Allied under the performance bond (the "bond"). Pursuant to its rights under the bond, Allied elected to arrange for the performance of Parkside's subcontract obligations.

After Allied's takeover of the subcontract, certain of the work performed by Allied and its new substitute subcontractor was alleged to be defective. By notices dated February 11, 2019 and April 1, 2019, among other notices, Gilbane notified Allied and Manhattan Concrete LLC – its new substitute subcontractor – that Gilbane had claims against them for their allegedly defective work and impermissible delays to the project. On December 4, 2019, the entire project was discontinued.

On February 17, 2021, Gilbane commenced this action by filing a summons and verified complaint with the Clerk of New York County (NYSCEF Doc. No. 1-2). On March 3, 2021, Gilbane served a copy of the summons and verified complaint on Allied. On March 22, 2021, Allied acknowledge the service in question. On August 27, 2021, Allied answered the complaint and asserted various counterclaims.

On February 23, 2021, Gilbane served a copy of the summons and verified complaint on Parkside by leaving a copy of the summons and verified complaint with an authorized agent in the office of the Secretary of State of New York. On or about February 27, 2021, Parkside was additionally served with a true copy of the summons and verified complaint by first-class mail at its last known address. Parkside never answered Gilbane's complaint. On February 17, 2022, Gilbane moved for a default judgment against Parkside. In the complaint, Gilbane asserts two

claims against Parkside: for breach of contract (first cause of action) and for contractual indemnification (fourth cause of action).

DISCUSSION

On an application for a default judgment, pursuant to CPLR 3215, plaintiff must submit "proof of service of the summons and the complaint[,] . . . proof of the facts constituting the claim, [and] the default" (CPLR 3215[f]). Upon default, "a defendant admits all traversable allegations contained in the complaint, and thus concedes liability, although not damages" (*HF Mgt. Servs. LLC v Dependable Care, LLC*, 198 AD3d 457, 458 [1st Dept 2021] [internal quotation marks and citation omitted]; *Petty v Law Off. of Robert P. Santoriella, P.C.*, 200 AD3d 621, 621 [1st Dept 2021] [while plaintiff must submit proof of prima facie viability of its claims, "the standard of proof is minimal"] [internal quotation marks and citation omitted]). Plaintiff has met this burden.

Plaintiff has demonstrated that it served defendant Parkside with the summons and complaint and that defendant's time to answer or appear has expired. An affidavit of service sworn to on February 24, 2021, shows that defendant, a domestic corporation with it principal place of business in New York, was served with process by service on the Secretary of State of New York at 99 Washington Ave, Albany, New York (NYSCEF Doc. No. 20). Such service is in conformity with CPLR 311(a)(1) and Business Corporation Law § 306(b). The time to answer expired 30 days after this service – in late March of 2021.

Plaintiff has also demonstrated its compliance with CPLR 3215(g)(4)(i). Plaintiff served defendant with additional notice of the summons and complaint by mail addressed to defendant at its last known place of business at 2 Hillside Avenue Williston, New York 11596, on February 27, 2021, in an envelope marked "Personal & Confidential" and which did not indicate on the

outside that said notice was from an attorney or concerned an alleged debt (NYSCEF Doc. No. 21).

Plaintiff has also demonstrated that it served a notice of motion for default judgment on Parkside, on February 17, 2022, at its last known place of business at 2 Hillside Avenue Williston, New York 11596.

As to the merits, in an action for breach of contract, a plaintiff must demonstrate: (1) a valid and enforceable contract; (2) the plaintiff's performance of the contract; (3) breach by the defendant; and (4) damages (*see Noise in Attic Prods., Inc. v London Records*, 10 AD3d 303, 307 [1st Dep't 2004]). Plaintiff has met its burden.

First, Gilbane and Parkside entered into the subcontract for valuable consideration and agreed on all material term. Gilbane also appears to have performed all of its obligations under the subcontract. Parkside, on the other hand, appears to have breached the terms of the subcontract by, among other things, failing to maintain the project schedule and failing to perform the work according to the subcontract drawings, plans, and specifications. Moreover, following criminal indictment of its principals, Parkside voluntarily acknowledged its material default and its inability to complete the project (NYSCEF Doc. No 2, complaint at 31). Gilbane has been damaged by Parkside's material breach and Parkside is therefore liable to Gilbane for said damages.

With respect to contractual indemnification, under paragraph 5.3 of the subcontract, Parkside is obligated to indemnify Gilbane from and against any and all claims, damages, losses, and expenses, including attorneys' fees, caused by Parkside's breach of the subcontract or other wrongful acts. Parkside's breaches of the subcontract are alleged to have caused claims, damages, losses, and expenses to Gilbane, for which Parkside is liable to Gilbane.

Accordingly, it is

ORDERED that the motion brought by plaintiff Gilbane for a default judgment on liability as against defendant Parkside is granted without opposition.

7/13/23
DATE

ROBERT R. REED, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE