

Ziborov v 427 E 90 Owner LLC

2024 NY Slip Op 30063(U)

January 8, 2024

Supreme Court, New York County

Docket Number: Index No. 151901/2022

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

-----X

OLEG ZIBOROV,

Plaintiff,

- v -

427 E 90 OWNER LLC., 427 EAST 90TH OWNER LLC.,
B.O.S.S. ASSOCIATES, INC., STARLITE PLMG & HTG
CORP.,

Defendant.

-----X

STARLITE PLMG & HTG CORP.

Plaintiff,

-against-

ALTAIR PLUMBING AND HEATING CORP.,

Defendant.

-----X

INDEX NO. 151901/2022
MOTION DATE 05/10/2023
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595027/2023

The following e-filed documents, listed by NYSCEF document number (Motion 001) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39

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

Upon the foregoing documents, there being no opposition, and good cause having been shown, Defendant/Third-Party Plaintiff Starlight Plumbing & Heating Corp.'s ("Starlight") May 10, 2023 motion directing entry of default judgment in favor of Starlight and against Third-Party Defendant Altair Plumbing & Heating Corp. ("Altair"), is granted.

An applicant for default judgment against a defendant must submit: (i) proof of service of the summons and complaint, (ii) proof of the facts constituting the claim, and (iii) proof of the defaulting defendant's failure to answer or appear (*PV Holding Corp v AB Quality Health Supply Corp*, 189 AD3d 645 [1st Dept 2020]). Affidavits submitted in support of a motion for default

judgment only need to allege enough facts to allow a court to assess where a viable cause of action exists (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). In undertaking this review, the Court is mindful that “defaulters are deemed to have admitted all factual allegations in the complaint and all reasonable inferences that flow from them (*Al Fayed v Barak*, 39 AD3d 371, 372 [1st Dept 2007]).

The Court finds that Starlight has satisfied proof of service by providing an Affidavit of Service evidencing service of the Third-Party Summons and Verified Third-Party Complaint upon Altair through a person authorized to receive such service at the Department of State on January 17, 2022, and upon Altair through their agent on January 27, 2023 (NYSCEF Doc. 34). Starlight has also satisfied its minimal burden of proving the facts constituting its claim by submitting an Affidavit of Merit on May 4, 2023 (NYSCEF Doc. 28). Further, Altair has failed to file an Answer to Starlight’s Third-Party Complaint or otherwise appear despite its time for doing so having expired. Therefore, entry of default judgment as to liability against Altair and in favor of Starlight on the first and second causes of action asserted in Starlight’s Verified Third-Party Complaint, is appropriate.

Accordingly, it is hereby,

ORDERED that Defendant/Third-Party Plaintiff Starlight Plumbing & Heating Corp.’s motion for default judgment against Third-Party Defendant Altair Plumbing & Heating Corp. is granted as to liability on the first and second causes of action asserted in Starlight’s Verified Third-Party Complaint; and it is further

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ORDERED that at the time of trial, an inquest on damages against Third-Party Defendant Altair Plumbing & Heating Corp. on the first and second causes of action asserted in Defendant/Third-Party Plaintiff Starlight Plumbing & Heating Corp.'s Verified Third-Party Complaint, is directed; and it is further

ORDERED that a copy of this Order with notice of entry be served by the movant upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is directed, upon the filing of a note of issue and a certificate of readiness and the payment of proper fees, if any, to place this action on the appropriate calendar for the inquest hereinabove directed; and it is further

ORDERED that such service 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 of the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that the active parties in this case are directed to submit a proposed Status Conference Order to the Court on or before February 6, 2024 via e-mail to SFC-Part33-Clerk@nycourts.gov. If the parties are unable to agree to a proposed Status Conference Order, the parties are directed to appear for an in-person status conference with the Court on February 7, 2024 at 9:30 a.m. in 60 Centre Street, Room 442, New York, New York; and it is further

ORDERED that within 30 days of entry, Defendant/Third-Party Plaintiff Starlight Plumbing & Heating Corp shall serve a copy of this Decision and Order, with notice of entry, via first-class mail, on all parties to this case at their last known business or residential address; and it is further

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ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

1/8/2024
DATE

Mary V Rosado Jsc
HON. MARY V. ROSADO, 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