

**Moncada v Superior Design Assoc. LLC**

2024 NY Slip Op 30997(U)

March 26, 2024

Supreme Court, New York County

Docket Number: Index No. 157234/2022

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

PERFECTO J. MONCADA,  
Plaintiff,

INDEX NO. 157234/2022

MOTION DATE 10/06/2023

MOTION SEQ. NO. 001

- v -

SUPERIOR DESIGN ASSOCIATES LLC, HILSON  
MANAGEMENT CORP., 390 FIFTH LLC.,

**DECISION + ORDER ON  
MOTION**

Defendant.

-----X

HILSON MANAGEMENT CORP., 390 FIFTH LLC.

Third-Party  
Index No. 595572/2023

Plaintiff,

-against-

ES SERVICE GROUP INC.,

Defendant.

-----X

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

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, there being no opposition and good cause having been shown, Defendants/Third-Party Plaintiffs Hilson Management Corp. ("Hilson") and 390 Fifth LLC's ("390 Fifth") (together "Movants") motion for an Order granting default judgment against Third-Party Defendant ES Service Group Inc. ("ES Service") and in favor of Movants, 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 Movants have satisfied proof of service of the Third-Party Summons and Third-Party Complaint (NYSCEF Doc. 31) upon ES Service by attaching an affidavit of service evidencing service upon ES Service through the Secretary of State on July 6, 2023 (NYSCEF Doc. 32). Movants have also satisfied their minimal burden of proving the facts constituting their claim by submitting an Affidavit of Merit dated October 3, 2023 (NYSCEF Doc. 33). Further, ES Service has failed to file an answer or otherwise appear despite its time for doing so having expired. Therefore, entry of default judgment as to liability against ES Service and in favor of Movants on Movants’ First Cause of Action for contractual indemnification, Second Cause of Action for common-law indemnification, Third Cause of Action for contribution, and Fourth Cause of Action for breach of contract, is appropriate.

Accordingly, it is hereby,

ORDERED that Defendants/Third-Party Plaintiffs Hilson Management Corp. and 390 Fifth LLC’s motion for default judgment against Third-Party Defendant ES Service Group Inc. is granted as to liability on Movants’ First Cause of Action for contractual indemnification, Second Cause of Action for common-law indemnification, Third Cause of Action for contribution, and Fourth Cause of Action for breach of contract; and it is further

*[The remainder of this page is intentionally left blank]*

ORDERED that an inquest on damages against Third-Party Defendant ES Service Group Inc. on Defendants/Third-Party Plaintiffs Hilson Management Corp. and 390 Fifth LLC's First Cause of Action for contractual indemnification, Second Cause of Action for common-law indemnification, Third Cause of Action for contribution, and Fourth Cause of Action for breach of contract is directed; and it is further

ORDERED that a copy of this Decision and Order, with notice of entry, be served by Defendants/Third-Party Plaintiffs Hilson Management Corp. and 390 Fifth LLC 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](http://www.nycourts.gov/supctmanh)); and it is further

ORDERED that within 30 days of entry, counsel for Defendants/Third-Party Plaintiffs Hilson Management Corp. and 390 Fifth LLC 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

*[The remainder of this page is intentionally left blank]*

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

This constitutes the Decision and Order of the Court.

3/26/2024  
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