

**Yawand-Wossen v M Sq. Bldrs. LLC**

2024 NY Slip Op 32424(U)

July 11, 2024

Supreme Court, New York County

Docket Number: Index No. 154127/2020

Judge: Nicholas W. Moyne

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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. NICHOLAS W. MOYNE PART 41M**

*Justice*

-----X

YADEY YAWAND-WOSSEN

Plaintiff,

- v -

M SQUARE BUILDERS LLC,

Defendant.

-----X

INDEX NO. 154127/2020

MOTION DATE 05/08/2023

MOTION SEQ. NO. 004

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83 were read on this motion to/for JUDGMENT - DEFAULT.

Upon the foregoing documents, it is

Plaintiff, Yadey Yawand-Wossen (“plaintiff”), commenced the underlying action against defendant, M Square Builders LLC (“defendant”), to recover damages allegedly sustained on or about May 6, 2019, and asserting claims of breach of contract and fraud. In Motion Sequence 001, dated August 31, 2020, defendant filed a pre-answer motion to dismiss causes of action in the verified complaint; specifically, the plaintiff’s second cause of action for fraud and plaintiff’s demand for punitive damages (NYSCEF Doc. No. 6). Plaintiff then filed an amended complaint on October 8, 2020, to which defendant then withdrew their motion (NYSCEF Doc. No. 12; 13). In Motion Sequence 002, dated November 16, 2020, defendant again filed a pre-answer to dismiss causes of action in the amended verified complaint; specifically, the second and third causes of action for fraud and the demand for punitive damages (NYSCEF Doc. No. 15). In a Decision and Order, issued by the Hon. Lucy Billings and dated December 23, 2021, this court granted the defendant’s pre-answer motion to dismiss, leaving only the plaintiff’s first cause of action for breach of contract, and directed defendant to file an answer to the amended complaint

within 20 days of the date the Decision and Order was filed: January 3, 2022 (NYSCEF Doc. No. 43).

On January 7, 2022, in a so-ordered stipulation, it was stipulated that the defendant was to file an answer to the verified amended complaint by February 14, 2022 (NYSCEF Doc. No. 46). Prior to February 14, in Motion Sequence 003, the attorney for defendant filed an order to show cause seeking to withdraw as counsel for the defendant (NYSCEF Doc. No. 48). In a Decision and Order, again issued by the Hon. Lucy Billings and dated April 4, 2022, the court granted the motion, and the action was stayed for 30 days following service of the Order for defendant to find new counsel (NYSCEF Doc. No. 55). Counsel served the Decision and Order on defendant via email on April 6, 2022, and personal delivery on April 9, 2022 (NYSCEF Doc. No. 56). Now, in Motion Sequence 004, Yadey Yawand-Wossen moves for an order, pursuant to CPLR § 3215, directing entry of a default judgment against M Square Builders LLC, in the amount of \$229,101.99, plus costs and interest, the damages allegedly caused as a result of the defendant's breach of contract.

On June 18 and June 25, 2020, plaintiff, in accordance with the method of service proscribed by LLC § 303, properly served the defendant with the original summons and complaint for this action (NYSCEF Doc. No. 2-4). Plaintiff's amended complaint was then filed on October 8, 2020, becoming the operative pleading for this action. Subsequently, defendant's time to answer was extended multiple times. Service of a notice of motion to dismiss, pursuant to § 3211(a), extends a defendant's time to answer the complaint (*Deutsche Bank Natl. Tr. Co. v Hall*, 185 AD3d 1006, 1008 [2d Dept 2020]). First, defendant, through their now-relieved counsel, originally appeared and the time to answer was extended by making a CPLR § 3211 motion to dismiss. Defendant was then first directed to file an answer to the amended complaint

within 20 days of the filing of the Decision and Order, January 3, 2022. The time was then extended pursuant to the so-ordered stipulation, made in accordance with CPLR § 2104 and signed and dated January 7, 2022, where defendant was directed to file an answer to the amended complaint on or before February 14, 2022 (NYSCEF Doc. No. 43; 46). Additionally, the motion to be relieved as counsel, pursuant to CPLR § 321 (b), was granted on April 4, 2022, with an automatic stay, pursuant to CPLR § 321 (c), staying the action for 30 days following service of the order, which was completed by April 9, 2022 (*see Soldovieri v Flack*, 106 AD3d 717, 719 [2d Dept 2013]; NYSCEF Doc. No. 55). Additionally, the Decision and Order granting withdrawal demonstrated that the defendant, a limited liability company, must appear by attorney as required by CPLR § 321 (a) (*see Mail Boxes Etc. USA, Inc. v Higgins*, 281 AD2d 176 [1st Dept 2001]).

Accordingly, the applicable time period in which new counsel for defendant ought to have appeared in some manner or sought an extension, and/or defendant ought to have answered the amended complaint has passed, and defendant has failed to do so (*see* CPLR §§ 3215 [a], 3012[d]; *see also Bank of New York Mellon v Jinks*, 127 AD3d 1367, 1368, [3rd Dept 2015] [Pursuant to CPLR 3012[d], the court possesses the discretion to extend a party's time to serve an answer upon a showing of reasonable excuse for delay or default, including a change of counsel]). On May 8, 2023, within the statutory one-year period following defendant's failure to respond to the amended complaint as directed by the Decision and Order in this action, dated April 4, 2022, plaintiff filed its application seeking entry of a default judgment (*see* NYSCEF Doc. No. 55; 57).

Additionally, as required by CPLR § 3215 (f), plaintiff has provided proof of service of the summons and complaint, the facts supporting its breach of contract claim, the default, and the

amount due, through the verified amended complaint and affidavit and supporting exhibits of Yadey Yawand-Wossen, a party with personal knowledge (*see* NYSCEF Doc. No. 58-76; *see Bigio v Gooding*, 213 AD3d 480, 481 [1st Dept 2023] [“To demonstrate facts constituting the claim, the movant need only proffer proof sufficient to enable a court to determine that a viable cause of action exists”]). As plaintiff has demonstrated compliance with the statutory requirements of CPLR § 3215 *et. seq.*, the motion for entry of a default judgment is granted.

Accordingly, it is hereby


ORDERED that the motion by plaintiff, Yadey Yawand-Wossen, is GRANTED; and it is further

ORDERED that plaintiff, Yadey Yawand-Wossen, with an address of 160 East 95<sup>th</sup> Street, New York, NY 10128, is granted a default judgment against defendant, M Square Builders LLC, having an address at 41 Box Street, Room 301, Brooklyn, NY 11222, in the amount of \$229,101.99, the amount of the resulting damages; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendant, in the amount of \$229,101.99, plus interest at the statutory rate of \_\_\_\_\_ % from the date of the alleged breach May 6, 2019, to the date of this order, as calculated by the Clerk in the amount of \$ \_\_\_\_\_, together with costs and disbursements in the amount of \$ \_\_\_\_\_, as taxed by the Clerk upon the submission of an appropriate bill of costs, for the total judgment amount of \$ \_\_\_\_\_, and that the plaintiff have execution thereof.

This constitutes the decision and order of the court.

7/11/2024  
DATE

  
NICHOLAS W. MOYNE, J.S.C.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
CLERK

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES  
TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE