

Porsche Cars N. Am., Inc. v JRM Constr. Mgt., LLC

2024 NY Slip Op 32678(U)

July 2, 2024

Supreme Court, New York County

Docket Number: Index No. 656626/2020

Judge: Emily Morales-Minerva

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. EMILY MORALES-MINERVA

PART 42M

Justice

-----X

PORSCHE CARS NORTH AMERICA, INC.,
Plaintiff,

- v -

JRM CONSTRUCTION MANAGEMENT, LLC, SSM DESIGN
LLP D/B/A SPECTOR GROUP ARCHITECTS,
Defendant.

-----X

SSM DESIGN LLP D/B/A SPECTOR GROUP ARCHITECTS
Plaintiff,

-against-

SEVERUD ASSOCIATES CONSULTING ENGINEERS P.C.
Defendant.

-----X

JRM CONSTRUCTION MANAGEMENT, LLC
Plaintiff,

-against-

AGL INDUSTRIES, INC., BINYAN CONSTRUCTION CORP.,
CONCRETE INDUSTRIES ONE CORP., UNIVERSAL
SERVICES GROUP, LTD., COGEN ELECTRICAL SERVICES,
INC., CAPITAL COOLING SYSTEMS LLC, AM
ARCHITECTURAL METAL & GLASS INC., SEVERUD
ASSOCIATES CONSULTING ENGINEERS P.C.
Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 010) 167, 168, 169, 170, 171, 172, 173, 174, 175, 176

were read on this motion to/for

RENEWAL

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595817/2022

Second Third-Party
Index No. 595950/2022

APPEARANCES:

Ropers Majeski PC, New York, New York (Scott James Laird, Esq., of counsel) for Second Third-Party Plaintiff.

HON. EMILY MORALES-MINERVA:

This is a breach of contract action in connection with the design and construction of a motor vehicle dealership located at 711 Eleventh Avenue, New York, New York 10019. In this motion, (sequence number 010) Second Third-Party Plaintiff JRM

CONSTRUCTION MANAGEMENT LLC ("JRM"), general contractor on the project, moves, pursuant to CPLR § 3215, for an order:

(1) granting it leave to enter a default judgment against Second Third-Party Defendants AGL INDUSTRIES, INC., CONCRETE INDUSTRIES ONE CORP., COGEN ELECTRICAL SERVICES, INC., and CAPITAL COOLING SYSTEMS LLC, (2) setting this matter down for an inquest at the time of trial to determine damages for the relief sought in the Second Third-Party Plaintiff's complaint, including an award for costs, attorney's fees and sanctions, and (3) granting it such other and further relief as the Court deems just, proper and equitable. No opposition is submitted.

For the reasons set forth below, the Court grants the motion as against Second Third Party Defendant CAPITAL COOLING SYSTEMS LLC alone.

BACKGROUND

By notice of motion (sequence number 007) dated January 23, 2024, JRM CONSTRUCTION MANAGEMENT LLC ("JRM") moved, pursuant to CPLR § 3215, for an order granting it a default judgment against AGL INDUSTRIES, INC., CONCRETE INDUSTRIES ONE CORP., COGEN ELECTRICAL SERVICES, INC., and CAPITAL COOLING SYSTEMS LLC (collectively "Second Third-Party Defendants"). The Court (N. Bannon, J.S.C.) denied said motion without prejudice to renewal within 30 days of its February 21, 2024 Decision and Order.

In denying said application, Honorable Nancy Bannon, J.S.C., identified several defects with JRM's motion (sequence number 007). First, the Court held that JRM failed to demonstrate proper service of the summons and complaint on any of Second Third-Party Defendants (see Decision and Order, dated February 21, 2024 [N. Bannon J.S.C.] p 2). Next, the court held that JRM failed to provide "proof of the facts constituting the claims," as JRM submitted no affidavit of someone with personal knowledge of the facts (see Decision and Order, dated February 21, 2024 [N. Bannon J.S.C.] p 3, citing CPLR § 3215[f]).

Within 30 days of the denial of the motion (sequence number 007), JRM submitted the instant motion (sequence number 010) seeking an order granting them a default judgment. The Second

Third-Party Defendants neither appeared nor submitted any opposition to the subject application.

ANALYSIS

On a motion for leave to enter a default judgment pursuant to CPLR § 3215, the movant must submit proof of service of the summons and complaint, the facts constituting the claim, and the default in answering or appearing (see CPLR § 3215(f); see also Bigio v Gooding, 213 AD3d 480 [1st Dept 2023]). To demonstrate "facts constituting the claim," the movant need only proffer enough facts to allow a court to assess whether a viable cause of action exists (see Woodson v Mendon Leasing Corp., 100 NY2d 62, 71 [2003]). Moreover, it follows that a defaulting party is deemed to have admitted factual allegations in the complaint, including the basic allegations of liability (see Al Fayed v Barak, 39 AD3d 371, 372 [1st Dept 2007]).

A court lacks personal jurisdiction over a defendant who is not properly served with process (see Nationstar Mtge., LLC v Esdelle, 186 AD3d 1384, 1386 [2d Dept 2020]). The proponent of a default judgment against a defendant corporation also must

comply with the additional mailing requirements as articulated in CPLR § 3215(g)(4)(i) and (ii).¹

SECOND THIRD-PARTY DEFENDANTS AGL INDUSTRIES, INC., CONCRETE INDUSTRIES ONE CORP., and COGEN ELECTRICAL SERVICES, INC.

Plaintiffs do not provide proof of additional service on the Second Third-Party Defendant corporations pursuant to CPLR 3215 § (g)(4)(i). Second Third-Party Plaintiff attached an affidavit of service, indicating that it mailed a copy of the Second Third-Party summons and complaint to Second Third-Party Defendants via certified mail, dated March 1, 2024 (NY St Elec Filing [NYSCEF] Doc. No. 176, affidavit of mailing, exhibit H). However, Second Third-Party Plaintiff does not provide proof that it mailed the Second Third-Party Defendants a copy of the summons and verified complaint at its last known address by first-class mail as required by CPLR § 3215 (g)(4)(i) (see Sterk-Kirch v Uptown Communications & Elec., Inc., 124 AD3d 413, 413-414 [1st Dept 2015]).

¹ CPLR § 3215[g][4][i] provides, in pertinent part, that when a default judgment is sought against a corporation that has been served by service upon the Secretary of State (see Business Corporation Law § 306[b]), the plaintiff must mail an additional copy of the summons and complaint to the corporation “via first class mail” at its “last known address.”

CPLR § 3215[g][4][ii] provides, in pertinent part, that when a default judgment is sought against a corporation that has been served by service upon the Secretary of State (see Business Corporation Law § 306[b]), the additional service of the summons by mail shall be accompanied “by a notice to the corporation that service is being made or has been made pursuant to [Business Corporation Law § 306[b]].”

SECOND THIRD-PARTY DEFENDANT CAPITAL COOLING SYSTEMS LLC

Second Third-Party Plaintiff demonstrated entitlement to the entry of a default judgment against Second Third-Party Defendant CAPITAL COOLING SYSTEMS LLC.

First, the court finds that the initial service on CAPITAL COOLING SYSTEMS LLC is in conformity with Limited Liability Company Law § 303 (see NYSCEF Doc. No. 64, affidavit of service, dated January 25, 2023, at 4). Therefore, Second Third-Party Plaintiff satisfied proof of service upon Second Third-Party Defendant CAPITAL COOLING SYSTEMS LLC.²

Next, Second Third-Party Plaintiff cured the defect in its previous application for default judgment (sequence number 007) where they failed to submit "an affidavit of someone with personal knowledge of the facts submitted" (see Decision and Order, dated February 21, 2024 [N. Bannon J.S.C.]). An application for a default judgment must be supported by either an affidavit from someone with personal knowledge of the facts asserted in the complaint (see Beltre v Babu, 32 AD3d 722 [1st Dept 2006]; and CPLR § 3215[f]) or a verified complaint (see Bigio 213 AD3d at 481; CPLR § 105 [u]).

² "By its express terms, the [additional] notice requirement is limited to situations where a default judgment is sought against a 'domestic or authorized foreign corporation' which has been served pursuant to Business Corporation Law § 306(b), and does not pertain to a limited liability company" such as the limited liability company defendant listed here (Gershman v. Ahmad, 131 AD3d 1104, 1105 (2d Dept 2015); see CPLR § 3215[g][4][i]; see also Confidential Lending, LLC v. Nurse, 120 AD3d 739, 742 (2d Dept 2014).

Here, in support of their motion, Second Third-Party Plaintiff submits a verified Second Third-Party Complaint, as well as an affidavit from JRM's general counsel, Christopher Smith, in which the court finds the facts surrounding the claim adequately ascertainable. Specifically, Smith states, with relevant exhibits attached thereto, that CAPITAL COOLING SYSTEMS LLC "failed to procure insurance naming JRM as an additional insured on a primary basis" and that CAPITAL COOLING SYSTEMS LLC "refused to defend, indemnify, and hold harmless JRM" as the parties agreed upon in the Master Subcontractor Agreement (see NYSCEF Doc. No. 172). Further, Smith affirms his personal knowledge of the contract between JRM and CAPITAL COOLING SYSTEMS LLC, the claims asserted in the verified Second Third-Party Complaint, and the scope of work performed (see NYSCEF Doc. No. 169, affidavit in support, exhibit A, at 3).

Therefore, the Court finds that Second Third-Party Plaintiff, JRM, has satisfied its minimal burden for entry of default judgment as to liability against Second Third-Party Defendant CAPITAL COOLING SYSTEMS LLC on the causes of action in Second Third-Party Plaintiff's complaint of contractual indemnification, breach of contract, common-law indemnification, and contribution.

Accordingly, it is

ORDERED that the Second Third-Party Plaintiff's motion pursuant to CPLR § 3215 for leave to enter a default judgment is granted against Second Third-Party Defendant CAPITAL COOLING SYSTEMS LLC; and it is further


ORDERED that an inquest on damages against Second Third-Party Defendant CAPITAL COOLING SYSTEMS LLC on Second Third-Party Plaintiff JRM CONSTRUCTION MANAGEMENT LLC's First Cause of Action for contractual indemnification, Second Cause of Action for breach of contract, Third Cause of Action for common-law indemnification, and Fourth Cause of Action for contribution is directed to be held at the time of trial; and it is further

ORDERED that the Second Third-Party Plaintiffs' motion pursuant to CPLR § 3215 for leave to enter a default judgment is denied without prejudice to renewal on proper papers within 30 days of this order against AGL INDUSTRIES, INC., CONCRETE INDUSTRIES ONE CORP., and COGEN ELECTRICAL SERVICES, INC.; and it is further

ORDERED that within 30 days of entry, counsel for Second Third-Party Plaintiffs JRM CONSTRUCTION MANAGEMENT LLC shall serve a copy of this Decision and Order, with notice of entry, via first-class mail, upon on all parties to this case at their last known business or residential address, and shall file such notice via NYSCEF; and it is further

ORDERED that the Clerk shall mark the file accordingly,

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT

<u>7/2/2024</u> DATE		 EMILY MORALES-MINERVA, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE