

**SB Beer LLC v Prospero Equip. Corp.**

2024 NY Slip Op 33174(U)

September 5, 2024

Supreme Court, New York County

Docket Number: Index No. 657795/2019

Judge: Debra A. James

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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. DEBRA A. JAMES**

**PART 59**

*Justice*

-----X

SB BEER LLC,

Plaintiff,

- v -

PROSPERO EQUIPMENT CORPORATION (settled) and  
SKRLJ D.O.O.,

Defendants.

-----X

INDEX NO. 657795/2019

MOTION DATE 09/05/2024

MOTION SEQ. NO. 004

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 162, 163, 164, 165, 166, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189 were read on this motion to/for EXTEND - TIME.

ORDER

Upon the foregoing documents, it is

ORDERED that the motion pursuant to CPLR §§ 2001 and 3215(c) of plaintiff for an order extending the time to seek a default judgment (sic) against defendant SKRLJ D.O.O. is granted; and it is further

ORDERED that the time for plaintiff to seek what it improperly characterizes as a default judgment is extended for a period of sixty (60) days from service of this order with notice of entry.

DECISION

22 NYCRR § 202.48 (emphasis supplied) provides, in pertinent part:

- (a) Proposed orders or judgments, with proof of service on all parties **where the order is directed to be settled or submitted on notice**, must be submitted for signature, unless otherwise directed by the court, within 60 days after the signing and filing of the decision directing that the order be settled or submitted.
- (b) Failure to submit the order or judgment timely shall be deemed an abandonment of the motion or action, unless for good cause shown.

This court disagrees with plaintiff that 22 NYCRR § 202.48 applies to its Order dated June 5, 2023, which was served with notice of entry on June 6, 2023, and by which this court granted plaintiff a monetary judgment against defendant SKRLJ D.O.O., and directed the Clerk to enter judgment (NYSCEF Document Number 156), as such Order neither directs plaintiff to submit or settle order.

Instead, CPLR 5017, Judgment-roll applies, which merely states:

- (a) Preparation and filing. A judgment-roll shall be prepared by the attorney for the party at whose instance the judgment is entered or by the clerk. It shall be filed by the clerk when [the Clerk] enters judgment, and shall state the date and time of its filing.

CPLR 5017 sets forth no time frame/deadline for the preparation and filing of such judgment-roll, though it would behoove any plaintiff to file such judgment-roll forthwith.<sup>1</sup>

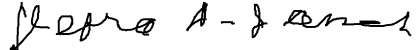
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<sup>1</sup>Nor does CPLR § 3215(c), also cited by plaintiff, apply, as the relief plaintiff sought was not for a default judgment in this lawsuit but was for judgment for breach of the Settlement Agreement dated July 22, 2020, so-ordered on August 7, 2020 (NYSCEF Document Number 010) in order to enforce such Agreement.

Assuming arguendo that 22 NYCRR § 202.48(a) were to apply, plaintiff had until August 7, 2023 to submit the "judgment roll" to the Clerk of the Court, and has not done so to date. Continuing with that hypothetical, pursuant to 22 NYCRR § 202.48, plaintiff has demonstrated sufficient cause why the complaint should not be dismissed, in the form of the convoluted procedural history of this case, including its filing of a timely notice of appeal from the foregoing order of the court and decision not to perfect such appeal due to cost considerations, as well as serious medical issues suffered by plaintiff's counsel, predating the Order, and continuing into October 2023.

In opposition, defendant SKRLJ D.O.O. has set forth no cognizable prejudice that it would suffer but for an order extending plaintiff's time to move, assuming arguendo that plaintiff needs such an extension. See LoPresti v Florio, 71 AD3d 574, 575 (1<sup>st</sup> Dept 2010). Moreover, defendant SKRLJ D.O.O. submits an affidavit, which is neither signed before a notary public nor otherwise properly verified. See CPLR 3021. As such defendant serially submits unverified party statements, the court shall disregard such defendant's opposition to the extent it makes any arguments as to the merits. See Grasso v Angerami, 79 NY2d 813 (1991). In addition, this court concurs with plaintiff that defendant must file a cross motion for the

affirmative relief it seeks, i.e., an order compelling plaintiff to accept the settlement funds and to sanction the plaintiff. Without such cross motion, the court shall not grant such relief. See Goodsill v Middleburgh Little League, 213 AD2d 843 (3d Dept 1995).



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9/5/2024		DEBRA A. JAMES, J.S.C.
<b>DATE</b>		
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED <input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED <input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> NON-FINAL DISPOSITION <input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER <input checked="" type="checkbox"/> SUBMIT ORDER <input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE
APPLICATION:		
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	