

Plummer v Key Devs. Inc.

2024 NY Slip Op 34525(U)

December 20, 2024

Supreme Court, New York County

Docket Number: Index No. 153612/2023

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

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JOHN PLUMMER, MARSHA LUE PLUMMER,

Plaintiff,

INDEX NO. 153612/2023

MOTION DATE 09/24/2024

MOTION SEQ. NO. 001

- v -

KEY DEVELOPERS INC., MARCUS GARVEY APARTMENTS L.P., CARTHAGE 124TH L.P., CARTHAGE REAL ESTATE ADVISORS LLC, CARTHAGE CONSTRUCTION LLC, CARTHAGE 124TH C L.P., CARTHAGE 124TH A L.P., PROGRESSIVE ENGINEERING PLLC, NY DEVELOPERS & MANAGEMENT LLC, CARTHAGE LOT 57 HOUSING DEVELOPMENT FUND COMPANY, INC.,

Defendant.

DECISION + ORDER ON MOTION

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KEY DEVELOPERS INC., MARCUS GARVEY APARTMENTS L.P., CARTHAGE 124TH L.P., CARTHAGE REAL ESTATE ADVISORS LLC, CARTHAGE CONSTRUCTION LLC, CARTHAGE 124TH C L.P., CARTHAGE 124TH A L.P., CARTHAGE LOT 57 HOUSING DEVELOPMENT FUND COMPANY, INC.,

Plaintiff,

Third-Party
Index No. 595536/2024

-against-

PIPING & PLUMBING SOLUTIONS NYC INC,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 38, 39, 40, 41, 42, 43, 44, 45, 47

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, a final submission date of October 31, 2024, and there being no opposition, Plaintiffs John Plummer, Jr. and Marsha Lue Plummer's ("Plaintiffs") motion seeking default judgment against Defendant Progressive Engineering PLLC ("Progressive Engineering") is granted in part and denied in part, and the branch of Plaintiffs' motion seeking

default judgment against Defendant NY Developers & Management LLC is withdrawn pursuant to the parties' stipulation dated October 30, 2024 (NYSCEF Doc. 47).

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]).

Here, Plaintiffs have submitted an affidavit of service of summons and complaint on Progressive Engineering through the NY Secretary of State, as well as the affidavit of merit of Plaintiff John Plummer, Jr. Plaintiffs also submitted proof of Progressive Engineering's failure to answer or otherwise appear. Moreover, the Court is satisfied with the proof of additional mailing to Progressive Engineering pursuant to CPLR 3215(g)(4). Therefore, Plaintiffs' motion seeking default judgment against Progressive Engineering is granted. Further, the Court, in the exercise of its discretion, denies Plaintiffs' request for sanctions and attorneys' fees and costs.

Accordingly, it is hereby,

ORDERED that Plaintiffs' motion seeking default judgment against Progressive Engineering is granted; and it is further

ORDERED that the branch of Plaintiffs' motion seeking default judgment against Defendant NY Developers & Management LLC is withdrawn pursuant to the stipulation dated October 30, 2024 (NYSCEF Doc. 47); and it is further

ORDERED that the branch of Plaintiffs' motion requesting sanctions and attorneys' fees and costs is denied; and it is further

ORDERED that at the time of trial, an inquest on damages against Progressive Engineering and in favor of Plaintiffs on Plaintiffs' first through fifth causes of action is directed; and it is further

ORDERED that a copy of this Decision and Order, with notice of entry, shall be served by counsel for Plaintiffs 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 trial calendar for the inquest hereinabove directed; and it is further

ORDERED that on or before February 17, 2025, the parties shall meet and confer and submit a proposed preliminary conference order to the Court via e-mail at bgilmartin@nycourts.gov. In the event the parties are unable to agree to a proposed preliminary conference order, the parties shall appear for an in-person preliminary conference on February 19, 2025 at 9:30 a.m. in Room 442, 60 Centre Street, New York, New York; and it is further

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ORDERED that within 10 days of entry, counsel for Plaintiffs shall serve a copy of this Decision and Order, with notice of entry, on all active parties to this action via NYSCEF and all defaulting parties via first-class mail at their last known business and/or residential addresses.

This constitutes the Decision and Order of the Court.

12/20/2024
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