

**Empire Constr. Supply, Inc. v NYR Contr. Corp.**

2024 NY Slip Op 35149(U)

October 1, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 607683/2024

Judge: Maureen Liccione

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This opinion is uncorrected and not selected for official publication.

Short Form Order

Index No. 607683/2024

SUPREME COURT – STATE OF NEW YORK  
PART 78 – SUFFOLK COUNTY

**P R E S E N T:**

**Hon. Maureen T. Liccione**

Justice Supreme Court

-----x  
EMPIRE CONSTRUCTION SUPPLY, INC.,  
d/b/a KAMCO SUPPLY CORP.,

Plaintiff,

-against-

NYR CONTRACTING CORP., PAUL  
BLONDER and MONA BLONDER,

Defendants;  
-----x

Mot. Seq. No. 001 – MG  
Orig. Return Date: 07/29/2024  
Mot. Submit Date: 07/31/2024

**PLAINTIFF’S ATTORNEY**  
MARSHALL M. STERN, ESQ.  
17 Cardiff Court  
Huntington Station, NY 11746

**DEFENDANT**  
NYR Contracting Corp.  
80 E. Artisan Avenue  
Huntington, NY 11743

**DEFENDANTS PRO SE**  
MONA BLONDER  
80 E. Artisan Avenue  
Huntington, NY 11743

PAUL BLONDER  
80 E. Artisan Avenue  
Huntington, NY 11743

Upon the e-filed documents numbered 9 to 23 and due deliberation, it is hereby  
**ORDERED** that plaintiff’s unopposed motion for default judgment against the defendants  
NYR Contracting Corp., Paul Blonder, and Mona Blonder is granted; and it is further  
**ORDERED** and **ADJUDGED** that plaintiff recovers of the defendants, NYR Contracting  
Corp., Paul Blonder, and Mona Blonder, jointly and severally, the sum of \$19,895.01, plus the  
service charge of \$2,835.04, plus attorney’s fees in the amount of \$6,631.67, for a total of amount  
of 29,361.72; and it is further  
**ORDERED** that plaintiff shall file a proposed judgment on NYSCEF within thirty (30)  
days of the date of this Order; and it is further

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**ORDERED** that plaintiff shall serve a copy of this Order with a notice of entry upon the defendants by first-class mail and certified mail return receipt requested no later than fifteen (15) days after the date of this Order and shall file proof of service on NYSCEF no later than twenty (20) days after the date of this Order.

This action was commenced on April 3, 2024 by Kamco Supply Corp. (Kamco Supply or plaintiff) to recover monies due to plaintiff by defendants NYR Contracting Corp. (NYR), Paul Blonder, and Mona Blonder (collectively defendants). Pursuant to the affidavits of service filed on NYSCEF, Paul and Mona Blonder (the Blonders) were served with the summons and complaint via personal service on April 3, 2024, and with an additional copy of the summons and complaint on April 12, 2024. Service upon NYR was effectuated on April 24, 2024 by delivery of the summons and complaint to the Secretary of State of New York. On May 8, 2024, plaintiff served an additional summons and complaint on NYR. Defendants have failed to answer and their time to answer has expired.

Plaintiff alleges that on or about September 8, 2020, in order to induce plaintiff to extend a line of credit to NYR, Paul Blonder executed a Credit Application on behalf of NYR, which contained a Personal Guarantee of Account signed by the individual defendants, Paul and Mona Blonder, and an Acknowledgement of Receipt of Conditions of Sale and Terms of Payment, signed by Paul Blonder on behalf of NYR as the buyer. The Credit Application listed NYR as the applicant for the credit, and the Blonders as the owners of the NYR. The Acknowledgment of Receipt of Conditions of Sale and Terms of Payment states: “[a] service charge of one and one half percent per month on the unpaid amount will be made on all past due account” (NYSCEF Doc No. 14). The document further states, inter alia, that “[i]n the event that this debt is turned over to an attorney for collection, the buyer and the individual guarantors agree to pay attorney fees equal to one third of the amount of the balance of principal and interest and owing” (*id.*). The Personal Guarantee of Account has similar language and provides that “[i]n the event Seller resorts to a collection agency or attorney, Buyer and/or guarantor shall be responsible for legal fees equal to 33 1/3% of Seller’s claim” (*id.*).

Plaintiff alleges that between August 8, 2023 and August 17, 2023, plaintiff sold and delivered building materials to NYR at the agreed price of \$31,949.06. According to plaintiff, NYR made payments of \$12,054.05, but failed to pay the remaining balance of \$19,895.01.

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Plaintiff now moves for a default judgment against the defendants. In support of its motion, plaintiff provides an affidavit from Lynn Taiano, the credit manager of plaintiff. Pursuant to Ms. Taiano, in or about November 2023, Empire Construction Supply, Inc. (Empire) acquired the assets, receivables and name of Kamco Supply, including the receivables of NYR and the guaranty of account by Paul Blonder and Mona Blonder. No opposition was filed to this motion.

According to CPLR 3215 (a), “[w]hen a defendant has failed to appear, plead or proceed to trial on an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed, the plaintiff may seek a default judgment against him.” On a motion for leave to enter judgment against a defendant for failure to answer or appear, a plaintiff must submit proof of service of the summons and complaint upon the defaulting defendant, proof of the facts constituting plaintiff’s claim, and proof of the defendant’s default (*Gray v Doyle*, 170 AD3d 969, 970 [2d Dept 2019]; CPLR 3215 [f]; *Triangle Properties 2, LLC v Narang*, 73 AD3d 1030, 1032 [2d Dept 2010]).

Plaintiff has moved for a default judgment within one year of the default and has demonstrated compliance with the provisions of CPLR 3215, including proper service via the Secretary of State on defendant NYR, proper service in accordance with CPLR 308 (1) on the Blonders, mailings of the summons and complaint to defendants pursuant to CPLR 3215 (g) (3) (i) and (4) (i), and submission of plaintiff’s affidavit of merit (*see Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]; CPLR 3215 [f]). Furthermore, plaintiff has alleged enough facts in the complaint and in the affidavit of merit to enable the Court to determine that a viable cause of action exists (*see Curra v Brunswick Hosp. Ctr., Inc.*, 161 AD3d 1042, 1043 [2d Dept 2018]).

Accordingly, plaintiff’s motion is granted. Plaintiff is entitled to recover against the defendants a judgment of \$19,895.01, plus the service charge on the unpaid balance of \$19,895.01 at the rate of 1.5% per month from August 17, 2023 to the date of the filing of plaintiff’s motion in the amount of \$2,835.04, plus attorney’s fees in the amount of \$6,631.67, which constitutes 33 1/3% of the unpaid principal of \$19,895.01.

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The foregoing constitutes the decision and Order of the Court.

ENTER

DATE: October 1, 2024  
Riverhead, NY

  
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HON. MAUREEN T. LICCIONE, J.S.C.

FINAL DISPOSITION

NON-FINAL DISPOSITION