

Fora Fin. Advance, LLC v Your Roofers, LLC
2024 NY Slip Op 35707(U)
March 25, 2024
Supreme Court, Nassau County
Docket Number: Index No. 612803/19
Judge: James P. McCormack
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SUPREME COURT - STATE OF NEW YORK

PRESENT:

Honorable James P. McCormack
Justice of the Supreme Court

_____^x

FORA FINANCIAL ADVANCE, LLC,

Plaintiff(s),

-against-

**YOUR ROOFERS, LLC d/b/a YOUR
ROOFERS and MICHELLE HOPPER,**

Defendant(s)

_____^x

**TRIAL/IAS, PART 8
NASSAU COUNTY**

Index No. 612803/19

**Motion Seq. No.: 001
Motion Submitted: 2/1/24**

The following papers read on this motion:

Notice of Motion/Supporting Exhibits.....X

Plaintiff, Fora Financial Advance, LLC (Fora), moves this court for an order pursuant to CPLR §3215, for leave to file a default judgment against Defendants, Your Roofers, LLC d/b/a Your Roofers (Roofers) and Michelle Hopper (Hopper), on the grounds that they have failed to appear in this action. The motion is unopposed.

This action was commenced by the filing of a summons and complaint dated September 11, 2019. Defendants have not answered or appeared.

A plaintiff seeking a default judgment under CPLR §3215 must present *prima facie* proof of a cause of action, and while a default admits all factual allegations of the complaint and all reasonable inferences therefrom, it does not admit legal conclusions which are reserved for the court's determination (*McGee v. Dunn*, 75 A.D.3d 624 [2d Dept. 2010]; *Green v. Dolphy Constr. Co.*, 187 A.D.2d 635 [2d Dept. 1992]; *Silberstein v. Presbyterian Hospital in the City of New York*, 96 A.D.2d 1096 [2d Dept. 1983]). CPLR § 3215 (a) permits a plaintiff to seek default when the defendant has failed to appear. “On a motion for leave to enter a default judgment pursuant to CPLR § 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting plaintiff's claim, and proof of the defaulting party's default in answering or appearing” (*Atlantic Cas. Ins. Co. v. RJNJ Servs., Inc.*, 89 AD3d 649 [2d Dept. 2011]).

“CPLR § 3215(f) states that upon any application for judgment by default, proof of facts constituting claim, default, and amount due are to be set forth in affidavit made by the party” (*HSBC Bank USA, N.A. v. Betts*, 67 AD3d 735, 736 [2d Dept. 2009]).

A plaintiff seeking to assert jurisdiction over a defendant “bears the ultimate burden of proving by a preponderance of the evidence that jurisdiction over the defendant was obtained by proper service of process” (*Gottesman v. Friedman*, 90 AD3d 608, 609 [2d Dept. 2011]). Service of process must be made in strict compliance with statutory methods for effecting personal service upon a natural person pursuant to CPLR § 308;

(*id.*).

Herein, according to the complaint and the contract, Fora and Roofers entered into an agreement to settle a prior dispute whereby Defendants would pay Fora \$96,374.58 by making monthly installment payments. Defendants made one payment of \$4,000.00 and then stopped. Fora alleges Defendants owe Fora \$92,374.58 which includes interest, costs and counsel fees as per the settlement agreement.

The court finds Defendants were properly served and have not appeared. The affidavits of service indicate that Hopper was served by personal delivery on October 3, 2019, and that Roofers was served that same date by service on Hopper, a person authorized to accept service. Further, Fora submits the affidavit of Jonathan Headley, Fora's Director of Collections and Servicing. Fora also submits the stipulation of settlement which allows Fora to move for a default judgment should Defendants breach the agreement. CPLR 3215(i) authorizes a party to move for default based upon a stipulation of settlement. The motion is timely because the stipulation did not contain any time constraints as to when Fora had to move for a default. (*Cook v. Greenbaum*, 18 AD3d 416 [2d Dept 2005]). As Defendants have not appeared, have defaulted on the stipulation of settlement and have not opposed this motion, leave for a default judgment will be granted.

Accordingly, it is hereby

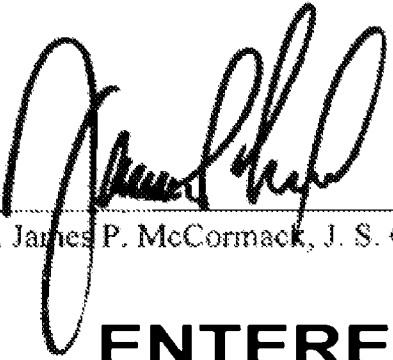
ORDERED, that Fora's motion for an order pursuant to CPLR §3215, directing a default judgment against Defendants in the amount of \$92,374.58 plus costs,

disbursements and interest, on the grounds that they have failed to appear in this action is
GRANTED.

This constitutes the Decision and Order of the Court.

Settle judgment on notice.

Dated: March 25, 2024
Mineola, N.Y.



Hon. James P. McCormack, J. S. C.

ENTERED

Mar 27 2024

NASSAU COUNTY
COUNTY CLERK'S OFFICE