

**Omnibuild Constr. Inc. v Express Plumbing Sewer &  
Water Main Corp.**

2025 NY Slip Op 30546(U)

February 7, 2025

Supreme Court, New York County

Docket Number: Index No. 650593/2023

Judge: Emily Morales-Minerva

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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. EMILY MORALES-MINERVA PART 42M**

*Justice*

-----X  
OMNIBUILD CONSTRUCTION INC.,  
Plaintiff,  
- v -  
EXPRESS PLUMBING SEWER AND WATER MAIN CORP.,  
and STREAM PLUMBING INC., FORMERLY KNOWN AS  
KANG SHUN CORPORATION,  
Defendant.  
-----X

INDEX NO. 650593/2023  
MOTION DATE 01/31/2024,  
11/12/2024  
MOTION SEQ. NO. 001 002

**DECISION + ORDER ON  
MOTION**

**APPEARANCES**

Canfield Ruggiero, LLP, Garden City, NY (John Ruggiero, Esq., of counsel), for plaintiff.

Stimpfl, Manashirov & Bundschuh, PLLC, Hauppauge, NY (Anastasis P. Sifounious, Esq.), of counsel for defendant Stream Plumbing, formerly known as Kang Shun Corporation.

Venable, LLP, New York, NY (Jeffery A. Meyer, Esq., of counsel), for non-party intervener 16 East 39<sup>th</sup> Street, LLC.

EMILY MORALES-MINERVA, J.S.C.

In this action for, among other things, contractual indemnification, non-party 16 EAST 39<sup>th</sup> STREET, LLC, filed a motion (seq. no. 001), pursuant to CPLR §§ 1012 (a) (3) and 1013, for an order permitting it to intervene in this action as a plaintiff against plaintiff OMNIBUILD CONSTRUCTION, INC. and defendants EXPRESS PLUMBING SEWER AND WATER MAIN CORP., and STREAM PLUMBING INC., formerly known as KANG SHUN CORPORATION.

This motion has been pending unopposed, since March 01, 2024, and was transferred to the undersigned at the end of January 2025.

Also in this action, defendant STREAM PLUMBING, formerly known as KANG SHUN CORPORATION filed a motion (seq. no. 002), for an order, pursuant to CPLR 3215 (c), dismissing plaintiff OMNIBUILD CONSTRUCTION, INC.'s complaint as abandoned. This motion, pending since November 11, 2024, was also transferred to this part at the end of January 2025. Plaintiff OMNIBUILD CONSTRUCTION INC. filed no opposition.

Given that both motions seq. nos. 001 and 002 were transferred to this Part beyond standards and goals, the undersigned scheduled a conference with the parties today, February 07, 2025, at 12:00 P.M., to discuss resolution. At the call of the calendar, plaintiff OMNIBUS CONSTRUCTION, INC., defendant STREAM PLUMBING INC., formerly known as KANG SHUN CORPORATION, and intervener 16 EAST 39<sup>th</sup> STREET, LLC appeared. Defendant EXPRESS PLUMBING SEWER AND WATER MAIN CORP. neither appeared nor contacted the court with an excuse or request for an adjournment.

On the record, among other things, the court noted that plaintiff and defendant STREAM PLUMBING, INC. submit no opposition to 16 East 39<sup>th</sup> Street, LLC's motion to intervene. CPLR § 1012 (a) (3), governing intervention as of right,

provides: "Upon timely motion, any person shall be permitted to intervene in any action: when the action involves the disposition or distribution of, or the title or a claim for damages for injury to, property and the person may be affected adversely by the judgment."

No dispute exists between the parties that non-party intervener would be entitled to bring an independent action on the same facts against plaintiff OMNIBUILD CONSTRUCTION, INC., and that, in such action, plaintiff OMINIBUS CONSTRUCTION, INC. would cross-move against the named defendants here. Further, the motion to intervene is timely. Therefore, the court shall permit 16 EAST 39<sup>TH</sup> STREET, LLC's intervention in this action.

The Court next addresses defendant STREAM PLUMBING's motion, pursuant to CPLR 3215 (c), for an order dismissing plaintiff OMNIBUILD CONSTRUCTION INC.'s complaint as abandoned.

CPLR 3215 (c) provides that "[i]f the plaintiff fails to take proceedings for the entry of judgment within one year after the default, the court shall not enter judgment but shall dismiss the complaint as abandoned . . . unless sufficient cause is shown why the complaint should not be dismissed" (emphasis added). To establish sufficient cause, plaintiff must demonstrate "'a viable excuse for the delay [and] a meritorious cause of action'" (Selective Auto Ins. Company of N.J. v Nesbitt, 161 AD3d 560, 560 [1<sup>st</sup> Dept 2018], quoting Hoppenfeld v

Hoppenfeld, 220 AD2d 302, 303 [1<sup>st</sup> Dept 1995] [providing: "Where . . . plaintiffs failed to pursue a default judgment within one year of the default in answering, and failed to set forth a viable excuse for the delay and demonstrate a meritorious cause of action, dismissal of the underlying action as abandoned is required" (emphasis added)], citing Gavalas v Podelson, 297 AD2d 535 [1st Dept 2002]).

Here, plaintiff OMNIBUILD CONSTRUCTION, INC. executed service on defendants EXPRESS PLUMBING SEWER AND WATER MAIN CORP., and STREAM PLUMBING INC., formerly known as KANG SHUN CORPORATION, on April 06, 2023 (see New York State Courts Electronic Filing System [NYSCEF] Doc No. 02, Affidavit of Service Through Secretary of State on Express Plumbing and Water Main Corp., and Doc. No. 03, Affidavit of Service Through Secretary of State on Stream Plumbing Inc.). These defendants then defaulted in failing to file an answer within 30 days following such service (see CPLR 3012 [c]).

Thereafter, plaintiff OMNIBUILD CONSTRUCTION, INC. took no steps to seek leave to enter a default judgment against either defendant. As said plaintiff failed to take proceedings for the entry of judgment within one year of the defendants' default, dismissal of the complaint is mandated because OMNIBUILD CONSTRUCTION, INC.'s makes no attempt to show sufficient cause for the complaint to survive (see CPLR 3215 [c]). To the

contrary, plaintiff OMNIBUILD CONSTRUCTION, INC. conceded, on record, that it did not seek a default judgment against defendants upon concluding that it had not yet sustained damages.

Accordingly, it is

ORDERED that motion (seq. no. 001) of intervener 16 EAST 39<sup>th</sup> STREET, LLC. is granted in its entirety; it is further

ORDERED that the caption be amended as follows:

16 EAST 39<sup>th</sup> STREET, LLC,

Intervenor-Plaintiff,

-against-

OMNIBUILD CONSTRUCTION, INC., EXPRESS  
PLUMBING SEWER AND WATER MAIN CORPORATION,  
and STREAM PLUMBING INC., formerly known as  
KANG SHUN CORPORATION,

Defendants."

It is further

ORDERED that intervener 16 EAST 39<sup>th</sup> STREET, LLC. shall serve a copy of this order with notice of entry upon the County Clerk and the Clerk of the General Clerk's Office, who are directed to mark the court's records to reflect 16 EAST 39<sup>th</sup> STREET, LLC. addition as a plaintiff within 20 days; it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website); it is further

ORDERED that intervener 16 EAST 39<sup>th</sup> STREET, LLC. shall serve this decision and order with notice of entry on all defendants within 10 days of such entry; it is further

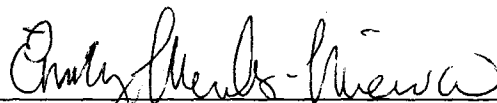
ORDERED that intervener shall serve its intervening complaint against defendants listed therein -- OMNIBUS CONSTRUCTION INC., EXPRESS PLUMBING SEWER AND WATER MAIN CORP., and STREAM PLUMBING INC., formerly known as, KANG SHUN CORPORATION -- within 30 days of service of this decision with notice of entry; it is further

ORDERED that motion (seq. no. 002) of defendant STREAM PLUMBING INC., formerly known as, KANG SHUN CORPORATION is granted in its entirety; it is further

ORDERED that the plaintiff OMNIBUILD CONSTRUCTION, INC.'s verified complaint, dated September 19, 2023, is dismissed.

This constitutes the decision and Order of the Court.

DATE: February 07, 2025



Emily Morales-Minerva, J.S.C.