

Cerros v New York City Tr. Auth.

2025 NY Slip Op 30794(U)

March 10, 2025

Supreme Court, New York County

Docket Number: Index No. 153784/2021

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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MAURICIO CERROS, ENMA CERROS,
Plaintiff,

INDEX NO. 153784/2021

MOTION DATE 12/05/2024

MOTION SEQ. NO. 006

- v -

NEW YORK CITY TRANSIT AUTHORITY,
METROPOLITAN TRANSPORTATION AUTHORITY, THE
CITY OF NEW YORK, TULLY CONSTRUCTION CO.,
WALSH CONSTRUCTION COMPANY II, FELDMAN
LUMBER-US LBM, LLC, JACOBS ENGINEERING NEW
YORK INC., JACOBS ENGINEERING GROUP,
INC., HOOVER TREATED WOOD PRODUCTS,
INC., PACIFIC WOOD LAMINATES, INC., SOUTH COAST
LUMBER CO., HOFER LOG & LUMBER LLC, HOFER
LUMBER INTERNATIONAL PLYWOOD COMPANY
LLC, MANKE LUMBER COMPANY, SHERWOOD LUMBER
CORPORATION, SHERWOOD LUMBER, REIPHOFF
SAWMILL, INC., SAFEGUARD, INC., D & M LUMBER
PRODUCTS CO., INC., ABC CORP., XYZ CORP.,

**DECISION + ORDER ON
MOTION**

Defendant.

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NEW YORK CITY TRANSIT AUTHORITY, METROPOLITAN
TRANSPORTATION AUTHORITY, THE CITY OF NEW YORK

Third-Party
Index No. 595079/2023

Plaintiff,

-against-

FELDMAN LUMBER-US LBM, LLC

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223

were read on this motion to/for JUDGMENT - DEFAULT.

Upon the foregoing documents, a final submission date of January 28, 2025, and there being no opposition, Plaintiffs Mauricio Cerros and Enma Cerros's ("Plaintiffs") motion seeking default judgment against Defendants International Plywood Company LLC ("Int'l Plywood") and

Reiphoff Sawmill Inc. (“Reiphoff”) (collectively “Defaulting Defendants”) and severing the remaining causes of action against the remaining appearing defendants is granted.

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, pursuant to Limited Liability Company Law § 303, on Int’l Plywood, and by personal service on Reiphoff (NYSCEF Docs. 218, 219). Plaintiffs submitted in support of this motion the affidavit of merit of Plaintiff Mauricio Cerros (NYSCEF Doc. 222). Plaintiffs also submitted proof of the Defaulting Defendants’ failure to answer or otherwise appear (*Id.*). Moreover, the Court is satisfied with the proof of additional mailing pursuant to CPLR 3215(g)(4) (NYSCEF Docs. 220-221). Therefore, Plaintiffs’ motion for default judgment against Defendants International Plywood Company LLC and Reiphoff Sawmill Inc. is granted. The remainder of the action shall be severed and continue against all other appearing defendants.

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Accordingly, it is hereby,

ORDERED that Plaintiffs Mauricio Cerros and Enma Cerros's motion seeking default judgment against Defendants International Plywood Company LLC and Reiphoff Sawmill Inc. is granted; and it is further

ORDERED that at the time of trial, an inquest on damages against Defendants International Plywood Company LLC and Reiphoff Sawmill Inc. and in favor of Plaintiffs Mauricio Cerros and Enma Cerros on Plaintiffs' first through eighth causes of action is directed; and it is further

ORDERED that the Clerk of the Court is directed to sever those portions of the first through eighth causes of action as asserted against Defendants International Plywood Company LLC and Reiphoff Sawmill Inc., and the balance of those causes of action as asserted against Defendants New York City Transit Authority, Metropolitan Transportation Authority, the City Of New York, Feldman Lumber-Us LBM, LLC, Jacobs Engineering New York Inc., Jacobs Engineering Group, Inc., Hoover Treated Wood Products, Inc., Pacific Wood Laminates, Inc., South Coast Lumber Co., Hofer Log & Lumber LLC, Hofer Lumber, Manke Lumber Company, Sherwood Lumber Corporation, Sherwood Lumber, Safeguard, Inc., D & M Lumber Products Co., Inc., ABC Corp., XYZ Corp. shall continue, along with the other causes of action asserted in the complaint; and it is further

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ORDERED that within ten 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 addresses.

This constitutes the Decision and Order of the Court.

3/10/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					OTHER
					REFERENCE