

**American Bldrs. & Contrs. Supply Co., Inc. v Trident
Gen. Contr. LLC**

2025 NY Slip Op 30935(U)

March 21, 2025

Supreme Court, New York County

Docket Number: Index No. 653045/2024

Judge: Arthur F. Engoron

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON PART 37

Justice

-----X

AMERICAN BUILDERS & CONTRACTORS SUPPLY CO.,
INC. D/B/A ABC SUPPLY CO., INC.,

Plaintiff,

- v -

TRIDENT GENERAL CONTRACTING LLC, PATRICK
MURPHY, LIBERTY MUTUAL INSURANCE COMPANY,
SUNBELT RENTALS, INC., MCB TRUCKING LLC, H.O.
PENN MACHINERY COMPANY, INC., NEW YORK
CONCRETE WASHOUT, CFS ENTERPRISES, INC. D/B/A
CFS STEEL COMPANY, JOHN OR JANE DOES (1-5),

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 35, 36, 37, 38, 39,
40, 41, 42, 43, 44,

were read on this motion for DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 002) 45, 46, 47, 48, 49,
50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 61, 62, 63, 64, 65, 66, 68,

were read on this motion for a DEFAULT JUDGMENT

Upon the foregoing documents, and for the reasons stated hereinbelow, plaintiff's motion for a
default judgment is denied, and the cross-motion of defendant Trident General Contracting LLC
("Trident") seeking to file a late answer and for permission to file late opposition to plaintiff's
pending prior motion is granted in part.

Background

On June 17, 2024, plaintiff commenced this breach of credit agreement action, asserting causes
of action for (1) breach of contract, (2) unjust enrichment, (3) quantum meruit, (4) account stated
and (5) action for the price against Trident, (6) foreclosure of a mechanic's lien against all
defendants, (7) and diversion of trust funds in violation of Article 3-A of the Lien Law against
Trident and defendants Patrick Murphy ("Murphy") and Does (1-5). NYSCEF Doc. No. 1.

On June 27, 2024, plaintiff served process upon defendant Patrick Murphy at his place of
residence. NYSCEF Doc. No. 13. On July 10, 2024, plaintiff served process upon Trident via
the Secretary of State. NYSCEF Doc. No. 14.

On July 11, 2024, defendant MCB Trucking LLC answered with a general denial and three
affirmative defenses. NYSCEF Doc. No. 12.

On July 16, 2024, defendant CFS Enterprises, Inc. d/b/a CFS Steel Company (“CFS”) answered with a general denial, six affirmative defenses, and a counterclaim asserting notice of mechanic’s lien bond foreclosure. NYSCEF Doc. No. 18.

On July 29, 2024, defendant H. O. Penn Machinery Company Inc. (“H. O.”), answered with a general denial and 11 affirmative defenses. NYSCEF Doc. No. 22.

On October 7, 2024, defendant New York Concrete Washout Systems, Inc. (“NYCWS”), answered with a general denial, nine affirmative defenses, and crossclaims against Trident and defendant Liberty Mutual Insurance Company (“Liberty”). NYSCEF Doc. No. 32.

On October 22, 2024, Liberty answered with a general denial and 16 affirmative defenses. NYSCEF Doc. No. 34.

On December 4, 2024, plaintiff moved (Motion Sequence 1) for an order: pursuant to Lien Law §§ 75 and 76, compelling Trident and Murphy to provide a verified statement for a construction project located at 1522 1st Avenue, New York, New York 10075 a/k/a 403 East 79th Street, New York, New York 10075; for an extension of the deadline for plaintiff to seek class action certification on its seventh cause of action; and for attorney’s fees. NYSCEF Doc. No. 35. The return date for Motion Sequence 1 was December 23, 2024, and no opposition was filed to that motion.

On January 4, 2025, plaintiff moved, pursuant to CPLR 3215, for a default judgment in the amount of \$176,501.72 against Trident on its breach of contract cause of action. NYSCEF Doc. No. 45.

On January 14, 2025, Trident and Murphy cross-moved, pursuant to CPLR 2004, 3012, and 3025(b), for leave to serve and file a late answer and for leave to file late opposition to Motion Sequence 1. NYSCEF Doc. No. 61. In support, cross-movants submit a brief affirmation from Murphy alleging a reasonable excuse for their default, namely that until December 18, 2024, Murphy had tried to negotiate a settlement with plaintiff without the aid of counsel. NYSCEF Doc. No. 64. Trident and Murphy also submit a proposed answer with a general denial, 26 affirmative defenses, and counterclaims of breach of contract, breach of express warranty, and breach of implied warranty. NYSCEF Doc. No. 63.

On February 11, 2024, plaintiff discontinued against H. O., only. NYSCEF Doc. No. 67.

Discussion

In order to successfully oppose a motion for a default judgment, a defendant must demonstrate a justifiable excuse for his default and a meritorious defense. Whether there is a reasonable excuse for a default is a discretionary, sui generis determination to be made by the court based on all relevant factors, including the extent of the delay, whether there has been prejudice to the opposing party, whether there has been willfulness, and the strong public policy in

favor of resolving cases on the merits.

New Media Holding Co. LLC v Kagalovsky, 97 AD3d 463, 465 (1st Dept 2012) (internal quotations and citations omitted).

Here, Trident and Murphy offer a reasonable excuse for their default, as Murphy was communicating with plaintiff's counsel. Cross-movant's default in answering does not appear to be willful, nor does it appear to be particularly prejudicial. Thus, the strong public policy preference for resolving controversies upon the merits warrants denying plaintiff's motion for a default judgment and granting that part of the cross-motion for leave to file a late answer.

Lien Law § 75 is unambiguous that "[e]very trustee shall keep books or records with respect to each trust of which he is trustee," and that "[f]ailure of the trustee to keep the books or records required by this section shall be presumptive evidence that the trustee has applied or consented to the application of trust funds actually received by him ... for purposes other than a purpose of the trust."

On April 22, 2024, pursuant to Lien Law § 76, plaintiff served cross-movants with a Demand for Verified Statements (NYSCEF Doc. No. 40) and, nearly a year later, that demand remains unanswered. Late filed opposition will not change the fact that plaintiff is entitled to a reply. As such, that part of the cross-motion seeking leave to file late opposition to Motion Sequence 1 should be denied and that motion should be granted. In its discretion, however, the Court declines to award plaintiff's request for attorney's fees.

This Court has considered the parties other arguments and finds them to be unavailing and/or non-dispositive.

Conclusion

Therefore, the motion of plaintiff, American Builders & Contractors Supply Co., Inc., d/b/a ABC Supply Co., Inc., for a default judgment (Motion Sequence 2) is hereby denied, and the cross-motion of defendants Trident General Contracting LLC and Patrick Murphy is granted to the extent that the proposed answer filed at NYSCEF Doc. No. 63 is deemed operative; and it is hereby

ORDERED that defendants Trident General Contracting LLC and Patrick Murphy shall provide plaintiff American Builders & Contractors Supply Co., Inc. d/b/a ABC Supply Co., Inc. with Trident General Contracting LLC's verified statement as to the construction project of a medical office building at the real property commonly known as 1522 1st Avenue, New York, New York 10075 a/k/a 403 East 79th Street, New York, New York 10075, and identified as Borough: Manhattan, Block: 1559, Lot: 1 on the Tax Map of the City of New York in compliance with Lien Law §§ 75 and 76 within ten (10) days from the date of entry of this Decision and Order; and it is further

ORDERED that the deadline for plaintiff American Builders & Contractors Supply Co., Inc. d/b/a ABC Supply Co., Inc. to seek class action certification pursuant to CPLR 902 and Lien Law § 77(1), of the Seventh Cause of Action under Article 3-A of the New York State Lien Law

that is set forth in ABC's Verified Complaint (NYSCEF Doc. No. 1) is hereby extended until the sixtieth (60th) day following the date on which defendants Trident General Contracting LLC and Patrick Murphy provide defendant Trident General Contracting LLC's full and proper verified statement for the 1st Avenue Project, in compliance with Lien Law §§ 75 and 76.

3/21/2025

DATE

HON. ARTHUR F. ENGORON

ARTHUR F. ENGORON, 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