

B&S Accounting Corp. v Charm Tax Servs. LLC

2025 NY Slip Op 31119(U)

April 2, 2025

Supreme Court, New York County

Docket Number: Index No. 651251/2018

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

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B&S ACCOUNTING CORP.,

INDEX NO. 651251/2018

Plaintiff,

- v -

DECISION AND ORDER
MOTION IN LIMINE #006

CHARM TAX SERVICES LLC, D/B/A LIBERTY TAX,
HARVEY GOSS,

Defendants.

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APPEARANCES:

Boris Kogan & Associates, New York, NY (Boris Kogan, Esq., of counsel), for plaintiff and third-party defendant.

Victoria M. Brown LLC, New York, NY (Victoria Brown, Esq., of counsel), for defendants and third-party plaintiff.

EMILY MORALES-MINERVA, J.S.C.

In this action for, among other things, breach of contract, defendants and third-party plaintiff (movants) filed a motion in limine, dated March 21, 2025, for an order, pursuant to CPLR 4540-a,1 deeming authentic the documents numbered 49 to 141 in

¹ CPLR 4540-a provides: "Material produced by a party in response to a demand . . . for material authored or otherwise created by such party shall be presumed authentic when offered into evidence by an adverse party. Such presumption may be rebutted by a preponderance of evidence proving such material is not authentic and shall not preclude any other objection to admissibility."

OTHER ORDER – NON-MOTION

their exhibit list (see New York State Courts Electronic Filing System [NYSCEF] Doc. No. 141, exhibit list of defendant/third party plaintiff, dated January 15, 2025, p 2-7).

Plaintiff and third-party defendant (respondents) submit opposition to the motion. However, respondents do not challenge the presumption of the documents' authenticity. Instead, respondents argue that the presumption does not preclude other objections to the admissibility of each of the 92 documents.

The Court held oral arguments on the application today, April 02, 2025, at 10:00AM, in Part 42M. At the call of the calendar both parties timely appeared.

During the arguments, movants clarified that they were solely seeking an order that the subject documents are authentic. Respondents also confirmed, as stated in their opposition, that they concede the authenticity of the subject materials but preserve the right to object to admissibility on other grounds.

As no controversy exists regarding the presumption of authenticity, the motion in limine is granted (see generally Matter of Hassine, 222 AD3d 522, 523 [1st Dept 2023] [providing "authenticity is not the same as admissibility" and quoting CPLR 4540-a to state that a "presumption of authenticity 'shall not preclude any other objection to admissibility'"]; see also People v Price, 29 NY3d 472, 476-477 [2017] [explaining the

requirement of authentication is a condition precedent to admitting evidence, which is established by proof that the offered evidence is genuine and that there has been no tampering with it]).

The Court next addresses the failure of both parties to comply with this Court's pre-trial conference order, dated December 11, 2024 (New York State Courts Electronic Filing System [NYSCEF] Doc. No 138). Said order plainly directs that, among other things, "the parties [in this seven-year-old action] shall exchange and file a final witness list and file a stipulation of undisputed exhibits by February 19, 2025" (id.). It is now four months since the Court issued said directive and the stipulation remains outstanding without excuse.

Let counsel be firmly reminded of their duty:

"COUNSEL FOR THE PARTIES SHALL CONSULT PRIOR TO TRIAL AND SHALL IN GOOD FAITH ATTEMPT TO AGREE UPON THE EXHIBITS THAT WILL BE OFFERED INTO EVIDENCE WITHOUT OBJECTION. . . PRIOR TO THE COMMENCEMENT OF THE TRIAL, EACH SIDE SHALL MARK ITS EXHIBITS INTO EVIDENCE, SUBJECT TO COURT APPROVAL, AS TO THOSE TO WHICH NO OBJECTION HAS BEEN MADE. ALL EXHIBITS NOT CONSENTED TO SHALL BE MARKED FOR IDENTIFICATION ONLY"

(Uniform Rules for the Supreme Court and the County Court [NYCRR] § 202.34 [emphasis added]).

Accordingly, it is

ORDERED that the motion in limine of defendants and third-party plaintiff is granted; it is further

ORDERED that the documents numbered as 49 to 141 in the exhibit list of defendants and third-party plaintiff (see NYSCEF Doc. No. 141, defendant/third party plaintiff - exhibit list, dated January 15, 2025, p. 2 - 7) are deemed authenticated over no objection to the presumption of authenticity, pursuant to CPLR 4540-a; and it is further

ORDERED that the parties shall comply with the Uniform Rules for the Supreme Court and the County Court (NYCRR) § 202.34 and shall also file and submit to the court a stipulation of undisputed exhibits by April 15, 2025, at 5:00 P.M.; it is further

ORDERED that all other deadlines in the pre-trial conference order, dated December 11, 2024, remain the same and in effect; it is further

ORDERED that failure, if any, to comply with this Court's directives as set forth herein and as set forth in the pre-trial conference order, dated December 11, 2024, may result in the Court holding a contempt hearing; and it is further

ORDERED that defendants and third-party plaintiff shall serve notice of this decision and order with notice of entry on plaintiff and third-party defendant through NYSCEF within three days of such entry.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.



EMILY MORALES-MINERVA, JSC

DATE: 4/2/2025

Check One:

Case Disposed

Non-Final Disposition

Check if Appropriate:

Other (Specify _____)