

**Whitehall & Co. LLC v Grand Isle LNG Holding Co.,
LLC**

2025 NY Slip Op 31160(U)

March 31, 2025

Supreme Court, New York County

Docket Number: Index No. 654166/2023

Judge: Nancy M. Bannon

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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. NANCY M. BANNON PART 61M

Justice

-----X

WHITEHALL & COMPANY LLC

Plaintiff,

- v -

GRAND ISLE LNG HOLDING COMPANY, LLC,

Defendant.

-----X

INDEX NO. 654166/2023

MOTION DATE 02/10/2025

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

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

In this breach of contract action to collect unpaid private placement, the court, by order dated December 11, 2024, ruled that the defendant’s answer would be stricken if it failed to appear at a compliance conference by counsel as required by CPLR 321(a) and respond to the plaintiff’s discovery demands, and otherwise denied the plaintiff’s motion for default judgment without prejudice (MOT SEQ 002). After the defendant failed to appear at the compliance conference, the court, by order dated January 16, 2025, struck the defendant’s answer pursuant to 22 NYCRR 202.27 for repeated failures to appear at discovery conferences, and for failure to retain an attorney as required by CPLR 321(a). The plaintiff now moves again pursuant to CPLR 3215(a) for leave to enter a default judgment against the defendant. No opposition is submitted.

The failure of a corporation to appear by counsel constitutes a default, permitting entry of a default judgment against it. See CPLR 321(a); Matter of Sharon B., 72 NY2d 394 (1988); Lopez-Reyes v Heriveaux, 144 AD3d 486 (1st Dept. 2016). “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 the claim, and proof of the defaulting party’s default in answering or appearing (see CPLR 3215[f]; Allstate Ins. Co. v Austin, 48 AD3d 720, 720 [2nd Dept. 2008]).” Atlantic Cas. Ins. Co. v RJNJ Services, Inc., 89 AD3d 649, 651 (2nd Dept. 2011).

In support of its motion, the plaintiff submits an affidavit of service and proof of the defendant's default. The plaintiff also submits proof of the facts constituting its first and second causes of action for account stated and breach of contract, respectively, through the subject agreement and an affirmation of Timothy Page, its representative. Page avers that the parties entered into an agreement on October 1, 2020, whereby the plaintiff agreed act as a financial advisor and placement agent for the defendant, and to assist the defendant in raising capital investment for a project development in Louisiana. Under Appendix C of the agreement, the plaintiff was entitled to 5% of the development capital raised, and that this fee was due upon the closing of a capital commitment. Paragraph E(iii) of Appendix C states that any compensation not paid would accrue interest at 18% per annum from the date that payment was due. Under paragraph 5, the plaintiff could also request reimbursement of out-of-pocket expenses incurred in performing its obligations, so long as these expenses did not exceed \$10,000.

Page further states that the plaintiff fulfilled its obligations under the agreement, and that the defendant obtained a \$59 million investment through ST Energy Company, LLC. A new entity, Grand Isle LNG Development Company, LLC, was formed, under which ST Energy agreed to invest \$59 million to fund and complete the project. The plaintiff also submits this new entity's operating agreement, dated May 20, 2022, which provides for ST Energy's \$59 million investment. The plaintiff also submits several invoices dated July 17, 2023, September 28, 2023, and December 11, 2023, in which the plaintiff seeks 5% of the \$59 million investment, equaling \$2.95 million plus accruing interest under Appendix C. Also submitted is another invoice dated September 28, 2023, in which the plaintiff seeks reimbursement of out-of-pocket expenses under Paragraph 5 of the agreement. Page states that the defendant failed to pay the plaintiff for its services.

This proof establishes the necessary elements the plaintiff's second claim for breach of contract claim: (1) the existence of a contract, (2) the plaintiffs' performance under the contract, (3) the defendants' breach of that contract, and (4) resulting damages. See Second Source Funding, LLC v Yellowstone Capital, LLC, 144 AD3d 445 (1st Dept. 2016); Harris v Seward Park Housing Corp., 79 AD3d 425 (1st Dept. 2010). Furthermore, "[w]hen an answer is stricken and a default entered, the defendant 'admits all traversable allegations in the complaint, including the basic allegation of liability, but does not admit the plaintiff's conclusion as to damages [citation omitted].'" Curiale v Ardra Ins. Co., 88 NY2d 268, 279 (1996), *quoting* Rokina Opt. Co. v Camera King, 63 NY2d 728, 730 (1984); see Amusement Bus. Underwriters v American Intl.

Group, 66 NY2d 878 (1985). Where, however, the damages are for a sum certain or a sum which can be made certain by computation, there is no need to conduct an inquest to assess the appropriate amount of damages. See Curiale v. Ardra Ins. Co., *supra*, at 279; Transit Graphics v. Arco Distrib., 202 AD2d 241, 241 (1st Dept 1994). No inquest is necessary here.

The proof also establishes the plaintiff's entitlement to the second cause of action. "An account stated is an agreement between the parties to an account based upon prior transactions between them with respect to the correctness of the separate items composing the account and the balance due, if any, in favor of one party or the other. . . In this regard, receipt and retention of plaintiff's accounts, without objection within a reasonable time, and agreement to pay a portion of the indebtedness, [gives] rise to an actionable account stated." Shea & Gould v Burr, 194 AD2d 369, 370 (1st Dept. 1993); see Morrison Cohen Singer and Weinstein, LLP v Waters, 13 AD3d 51 (1st Dept. 2004). It is well settled that a cause of action for account stated may be established by demonstrating either partial payment or retention of bills without objection. See *Id*; M&R Constr. Corp. v IDI Constr. Co., 4 AD3d 130 (1st Dept. 2004). Page states that the defendant never raised any objections to the invoices submitted by the plaintiff.

The court does not reach the third cause of action alleging unjust enrichment. As a general rule, where, as here, a plaintiff seeks to recover under an express agreement, no cause of action lies to recover for unjust enrichment. See Clark-Fitzpatrick, Inc. v Long Is. R.R. Co., 70 NY2d 382 (1987); JDF Realty, Inc. v Sartiano, 93 AD3d 410 (1st Dept. 2012).

Accordingly, upon the foregoing papers and the court's prior orders, it is

ORDERED that the plaintiff's motion pursuant to CPLR 3215 for leave to enter a default judgment against the defendant is granted, without opposition, and it is further

ORDERED that the Clerk shall enter judgment in favor of the plaintiff Whitehall & Company LLC and against the defendant Grand Isle LNG Holding Company, LLC, in the sum of \$2,950,000.00, plus costs and contractual interest from May 20, 2022, at 18% per annum, and in the sum of \$10,000, plus costs and statutory interest of 9% from September 28, 2023, and it is further,

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.



 NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

3/31/2025

 DATE

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