

Original Madras Trading Corp. v Bridge & Burn

2025 NY Slip Op 31768(U)

May 5, 2025

Supreme Court, New York County

Docket Number: Index No. 655570/2023

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

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INDEX NO. 655570/2023

ORIGINAL MADRAS TRADING CORP.,

MOTION DATE 02/25/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

BRIDGE & BURN, ERICK POWELL, THE HEDGEHOG
COMPANY

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for JUDGMENT - DEFAULT

APPEARANCES:

Law Offices of Fred L. Seeman, New York, NY (Fred L. Seeman, Esq., of counsel), for plaintiff.

EMILY MORALES-MINERVA, J.S.C.

In this breach of contract action, plaintiff ORIGINAL MADRAS TRADING CORP. moves, by notice of motion (seq. no. 001), for an order, pursuant to CPLR § 3215, granting it a default judgment against defendant THE HEDGEHOG COMPANY, a limited liability corporation.¹ Defendant does not appear or submit opposition.

¹Plaintiff initially included BRIDGE & BURN and ERICK POWELL as defendants in this action. However, plaintiff discontinued the action against these two defendants on January 03, 2025 (see New York State Court Electronic Filing System [NYSCEF] Doc. No. 06, Notice of Partial Discontinuance as against defendants BRIDGE & BURN and ERIK POWELL with Prejudice, dated January 03, 2025).

As explained below, the Court dismisses the motion.

When a defendant fails "to appear, plead or proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed, the plaintiff may seek a default judgment against [the defendant]" (CPLR § 3215 [a]). Generally, the proponent of a default judgment shall file proof of (1) service of the summons and complaint, of (2) the facts constituting the claim, and of (3) the default and the amount due (see CPLR § 3215 [f]).

Where, as here, a non-appearing defendant is a limited liability corporation served with the summons and complaint through an authorized agent pursuant to CPLR § 311-a,² the

² CPLR § 311-a provides, as pertinent here, "Service of process on any domestic or foreign limited liability company shall be made by delivering a copy personally to (i) any member of the limited liability company in this state, if the management of the limited liability company is vested in its members, (ii) any manager of the limited liability company in this state, if the management of the limited liability company is vested in one or more managers, (iii) to any other agent authorized by appointment to receive process, or (iv) to any other person designated by the limited liability company to receive process, in the manner provided by law for service of a summons as if such person was a defendant. Service of process upon a limited liability company may also be made pursuant to article three of the limited liability company law."

Limited Liability Company Law § 303 provides, as relevant here, "Service of process on the secretary of state as agent of a domestic limited liability company or authorized foreign limited liability company shall be made in the manner provided by paragraph one or two of this subdivision. . . . (1) Personally delivering to and leaving with the secretary of state or his or her deputy, or with any person authorized by the secretary of state to receive such service, at the office of the department of state in the city of Albany . . . (2) Electronically submitting a copy of the process to the department of state together with the statutory fee, which fee shall be a taxable disbursement, through an electronic system operated by the department of state, provided the domestic or authorized foreign limited liability company has an email address on file in the department of state to which the secretary of state shall email a notice of the fact that process has been served electronically on the secretary of state."

affidavit of service must state that the individual who accepted service was authorized to do so in order to qualify as proper service under CPLR § 311-a (see Manfredo v 100-106 LLC, 224 AD3d 626 [1st Dept 2024] [holding that plaintiff did not effectuate personal jurisdiction over defendant under either CPLR § 311-a or Limited Liability Company Law § 303, as person served "was not an authorized agent, manager or otherwise authorized to accept service of process on behalf of [defendant]", nor was the LLC served via the Secretary of State]; see also Pinzon v IKEA New York, LLC, 163 AD3d 733 [2d Dept 2018]).

The affidavit of service states that on January 27, 2024, at 1:41 P.M., plaintiff's process served the summons and complaint on

"Julie Simmons, The Hedgehog Company, 1160 Montford Drive, Charlotte, NC 28209. **Manner of Service:** Authorized. **Additional Comments:** Jan 27, 2024 1:41 pm EST at 1160 Montford Drive, Charlotte, NC 28209 received by Julie Simmons, The Hedgehog Company - 5'6" Caucasian female approx. 60 years old, blond hair and brown eyes with glasses, 130 lbs."

(emphasis in original) (NYSCEF Doc. No. 04, Affidavit of Service). This affidavit of service is defective, because the process server does not aver, as required by CPLR § 311-a, that the individual served was an authorized representative of defendant THE HEDGEHOG COMPANY (see Commissiong v Mark Greenberg Real Estate Co. LLC, 203 AD3d 657 [1st Dept 2022] [plaintiff failed to meet his burden of showing that defendant was served

in accordance with CPLR § 311-a because process server did not affirmatively indicate that the individual he served was an "an officer, authorized agent, or member of the defendant entit[y]"). Absent proper service of process, the court lacks jurisdiction over defendant.

Accordingly, it is hereby

ORDERED that plaintiff's motion (seq. no. 001), pursuant to CPLR § 3215, for a default judgment, is denied without prejudice; it is further

ORDERED that plaintiff shall re-make the motion upon proper papers within ninety (90) days of the date of this order; it is further

ORDERED that the Clerk of the Court shall mark the file accordingly.

05/15/2025
DATE

Emily Morales-Minerva
EMILY MORALES-MINERVA, J.S.C.

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