

1 Park Row Dev., LLC v JNR Flooring, Inc.

2025 NY Slip Op 32578(U)

June 30, 2025

Supreme Court, New York County

Docket Number: Index No. 653353/2023

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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1 PARK ROW DEVELOPMENT, LLC,	INDEX NO.	<u>653353/2023</u>
Plaintiff,	MOTION DATE	<u> </u>
- v -	MOTION SEQ. NO.	<u>005</u>
JNR FLOORING, INC.	DECISION + ORDER ON MOTION	
Defendant.		

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126 were read on this motion to/for JUDGMENT - DEFAULT.

In motion seq. no. 005, plaintiff moves, pursuant to CPLR 3215, for a default judgment against the remaining defendant in this action, JNR Flooring, Inc. (JNR).

“On a motion for a default judgment under CPLR 3215 based upon a failure to answer the complaint, a plaintiff demonstrates entitlement to a default judgment against a defendant by submitting: (1) proof of service of the summons and complaint; (2) proof of the facts constituting its claim; and (3) proof of the defendant's default in answering or appearing.” (*Medina v Sheng Hui Realty LLC*, 2018 WL 2136441, *6-7 [Sup Ct, NY County 2018] [citations omitted].) “Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action. The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts.” (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994] [citations omitted].)

Proof of Service

Plaintiff submits proof that it served JNR with the complaint (NYSCEF Doc. Nos. [NYSCEF] 84, Affidavits of Service.) JNR also appeared in this action and was represented by counsel until counsel's withdrawal on December 21, 2024. (NYSCEF 74, Decision and Order [seq. no. 004].) JNR, a corporate entity, failed to retain new counsel as required by CPLR 321.

Proof of Facts

CPLR 3215 (f) requires a plaintiff to submit "proof of the facts constituting the claim, the default and the amount due by affidavit Where a verified complaint has been served, it may be used as the affidavit of the facts constituting the claim and the amount due; in such case, an affidavit as to the default shall be made by the party or the party's attorney."

Plaintiff asserts three causes of action against JNR – (1) breach of the Phase 2 Agreement, (2) breach of the JNR subcontract as a third-party beneficiary, and (3) negligence. (NYSCEF 87, Verified Amended Complaint.) In support of its motion, plaintiff submits the affidavit of Gary Feldman, plaintiff's managing member and accompanying exhibits, including the Phase 2 Agreement, invoices, liens, a survey, and an inspection reports. (NYSCEF 97, Feldman aff ¶ 1; NYSCEF 98-124, Exhibits; see *also* NYSCEF 87, Verified Amended Complaint.)

On May 2, 2022, JNR entered into a subcontract with former defendant MJM Associates Construction, LLC (MJM) (JNR Subcontract). (NYSCEF 97, Feldman aff ¶ 4.) Pursuant to the JNR Subcontract, JNR was to furnish and install the labor and materials for "excavation, excavation, foundations,

waterproofing, and concrete superstructure work” at the worksite in exchange for the sum of \$9,500,000. (*Id.* ¶ 5; NYSCEF 4, JNR Subcontract § 10.1.)

Substantial completion of the work was required by November 30, 2022.

(NYSCEF 4, JNR Subcontract § 9.2.3.) JNR agreed to “defend and indemnify [MJM] and [plaintiff] from all loss, liability, damage, or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any of the Subcontractor's subcontractors, suppliers, or vendor of any tier.” (*Id.* § 11.1.10.)

In anticipation of MJM ceasing work on the project, plaintiff and JNR entered into the Phase 2 Agreement to install “the pile terminations, pouring the concrete for the ground floor, and installing the stairs” for a sum of \$1,220,000 (NYSCEF 97, Feldman aff ¶ 10; NYSCEF 100, Phase 2 Agreement.)

Plaintiff alleges that JNR breached both agreements by failing to meet the substantial completion deadline, performing deficient work, and ultimately abandoning the project. (NYSCEF 97, Feldman aff ¶¶ 14-24.) JNR’s subcontractors, suppliers, and vendors started filing liens against the property. (*Id.* ¶¶ 26-32.) Plaintiff asserts that JNR’s failure to defend and indemnify plaintiff was also a breach of the agreements. (*Id.* ¶¶ 40-42.)

“To state a claim for breach of contract, a plaintiff must allege: (1) the parties entered into a valid agreement, (2) plaintiff performed, (3) defendant failed to perform, and (4) damages.” (*VisionChina Media Inc. v Shareholder Representative Servs., LLC*, 109 AD3d 49, 58 [1st Dept 2013] [citation omitted].) As the Phase 2 Agreement, plaintiff has submitted sufficient proof of the existence of the agreement, plaintiff’s performance

(JNR acknowledged that it had been paid \$987,800 out of the Phase 2 Agreement's total contract sum of \$1,220,000 [NYSCEF 104, JNR Partial Waiver & Release of Lien]), JNR's breaches, and damages (NYSCEF 97, Feldman aff ¶¶ 44-51).

Regarding the JNR Subcontract,

"[a] party asserting rights as a third-party beneficiary must allege: (1) the existence of a valid and binding contract between other parties, (2) that the contract was intended for its benefit, and (3) that the benefit to it is sufficiently immediate, rather than incidental, to indicate the assumption by the contracting parties of a duty to compensate it if the benefit is lost. In determining third-party beneficiary status it is permissible for the court to look at the surrounding circumstances as well as the agreement. A party may be deemed an intended third-party beneficiary of a contract only when it is . . . clear from the language of the contract that there was 'an intent to permit enforcement by the third party.'" (*Fin. Assistance, Inc. v Graham*, 191 AD3d 952, 955-956 [2d Dept 2021] [internal quotation marks and citations omitted].)

In addition to submitting sufficient proof of the agreement, performance and breaches of as detailed above, plaintiff has sufficiently alleged in the verified amended complaint, that the "JNR Subcontract was entered into and intended for Plaintiff's benefit." (NYSCEF 87, Verified Amended Complaint ¶ 103, ¶¶ 104-107.)

Plaintiff's cause of action for negligence is in the alternative to the breach of contract claims. Thus, the court need not address it, as plaintiff has submitted sufficient proof for its two breach of contract claims.

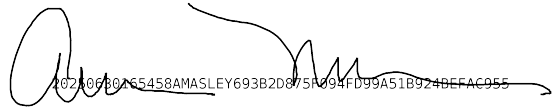
Proof of Default

A corporate defendant's failure to retain counsel, as required by CPLR 321, is a ground for default. (*Mail Boxes Etc. USA, Inc. v Higgins*, 281 AD2d 176 [1st Dept 2001].) Plaintiff's counsel affirms that JNR is in default for failing to retain counsel and

otherwise appearing in this matter after JNR’s former counsel was relieved. (NYSCEF 82, Schmitt aff ¶¶ 22-24.)

Accordingly, it is

ORDERED that the plaintiff's motion for a default judgment is granted, and the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendant in the sum of \$237,995.40, with interest at the rate of 9% per annum from the date of July 25, 2023, until the date of the decision on this motion, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs.



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6/30/2025

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE