

**Allied Safety Consultants Inc. v Parkview Mgt. Inc.**

2025 NY Slip Op 32880(U)

July 17, 2025

Supreme Court, New York County

Docket Number: Index No. 650188/2024

Judge: Emily Morales-Minerva

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. EMILY MORALES-MINERVA PART 42M

Justice

-----X

ALLIED SAFETY CONSULTANTS INC.

Plaintiff,

- v -

PARKVIEW MANAGEMENT INC.,

Defendant.

-----X

INDEX NO. 650188/2024

MOTION DATE 05/23/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11

were read on this motion to/for JUDGMENT - DEFAULT

APPEARANCES:

Canfield Ruggiero LLP, Melville, NY (John Paul Ruggiero, Esq., of counsel), for plaintiff.

EMILY MORALES-MINERVA, J.S.C.

In this action, commenced by summons with notice, plaintiff ALLIED SAFETY CONSULTANTS INC., moves, by notice of motion (motion seq. no. 001), pursuant to CPLR § 3215, for an order granting it a default judgment against defendant PARKVIEW MANAGEMENT INC. in the amount of \$731,344.00. Defendant does not appear or submit opposition.

Plaintiff, in its summons with notice, provides that plaintiff will assert causes of action sounding in breach of contract, unjust enrichment and account stated (see New York State Court Electronic Filing System [NYSCEF] Doc. No. 001,

Summons with Notice, dated January 12, 2024). However, plaintiff did not file a complaint.

For the reasons set forth below, the motion is denied.

Pursuant to CPLR § 3215 (a), a plaintiff may seek a default judgment where a defendant fails to appear, plead, or proceed to trial. 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 generally CPLR § 3215; see also Allstate Ins. Co. v Austin, 48 AD3d 720, 720 [2d Dept 2008]).

"CPLR § 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action" (Welz v Brown, 228 AD3d 416, 418 [1st Dept 2024]; Joosten v Gale, 129 AD2d 531, 535 [1st Dept 1987]). While the standard of proof necessary to support an application for a default judgment is not stringent, some firsthand confirmation of the facts forming the basis of the claim is necessary (see Feffer v Malpeso, 210 AD2d 60, 61 [1st Dept 1994]; see also Resnick v Lebovitz, 28 AD3d 533 [2d Dept 2006]).

To prevail on its breach of contract claim, plaintiff must establish that (1) a contract exists between the parties; that (2) plaintiff performed in accordance with the contract; that (3) defendants breached their contractual obligations; and that (4) defendants breach resulted in damages (see generally 34-06 73, LLC v Seneca Ins. Co., 39 NY3d 44, 52 [2022] [discussing the standard for a breach of contract in the context of a pleading]). This standard requires the plaintiff to demonstrate "the essential terms of the parties' purported contract, including the specific provisions of the contract upon which liability is predicated" (Hempel v Wise, 224 AD3d 574, 575 [1st Dept 2024], quoting Matter of Sud v Sud, 211 AD2d 423, 424 [1st Dept 1995]; see also Harman Becker Auto. Sys., Inc. v Avnet, Inc., 2025 NY App Div LEXIS 2126, \* 4, 2025 NY Slip Op 02157, \*\* 2 [1st Dept 2025]).

Here, Plaintiff ALLIED SAFETY CONSULTANTS INC. submits the summons with notice (NYSCEF Doc. No. 001) -- no complaint having been filed or served -- the affidavit of Yvon Cantave, President of plaintiff (NYSCEF Doc. No. 004), an undated document entitled "ASC Proposal" (NYSCEF Doc. No. 008), and a document purported to reflect invoices, entitled "Allied Safety, Parkview-329 Broadway, Summary-SSM" (NYSCEF Doc. No. 009). However, the purported contract appears to simply be a proposal, with an unidentified, illegible signature appearing on the last page

(see NYSCEF Doc. No. 008, ASC Proposal). The supporting affidavit of Yvon Cantave, president of plaintiff, is silent as to her personal knowledge of whether the signature is in fact that of defendant, providing only that "the written agreement was duly executed by defendant", and referencing the document entitled "ASC Proposal" (NYSCEF Doc. No. 004, Affidavit of Yvon Cantave, dated February 04, 2025). Since no complaint was served or filed, there is no other pleadings to look to for further details.

The court next addresses plaintiff's account stated claim. "An account stated claim is an account balanced and rendered, with an assent to the balance express or implied; so that the demand is essentially the same as if a promissory note had been given for the balance" (TH Fashion Ltd. v Vince Holding Corp., 230 AD3d 1079, 1079-1080 [1st Dept 2024], quoting Aronson Mayefsky & Sloan, LLP v Praeger, 228 AD3d 182, 185 [1st Dept 2024] [internal quotation marks omitted]). Such assent may be "implied where a defendant retains bills without objecting to them within a reasonable period of time, or makes partial payment on the account" (Stardom Brands, LLC v S.K.I. Wholesale Beer Corp., 172 AD3d 1266, 1268 [2d Dept 2019]; see generally Aronson Mayefsky & Sloan, LLP, 228 AD3d at 185).

However, this cause of action assumes the existence of some indebtedness between the parties, or an express agreement

to treat a statement of debt as an account stated (see Dragonetti Bros. Landscaping Nursery & Florist, Inc. v Verizon N.Y., Inc., 208 AD3d 1125, 1126 [1st Dept 2022] [holding that an account stated claim failed because there was no alleged "'agreement between parties to an account based upon prior transactions between them with respect to the correctness of the account items and balance due'"], citing Ryan Graphics, Inc. v Bailin, 39 AD3d 249, 250 [1st Dept 2007] and Interman Indus. Prods. v R.S.M. Electron Power, 37 NY2d 151, 156 [1975] ["no written instrument" existed "by which the defendant . . . expressly obligated itself to make the payments required by the accounts stated"]).

When, as here, plaintiff is asserting an account stated claim -- it "does not have to establish the reasonableness of its fee" because the client's act of holding the [invoice] without objection will be considered acquiescence as to its correctness" (Lapidus & Assoc., LLP v Elizabeth St., Inc., 92 AD3d 405, 405-406 [1st Dept 2012] [citations omitted]; see also O'Connell & Aronowitz v Gullo, 229 AD2d 637, 638, [3d Dept 1996] [providing "(a) [party] can recover under [a] cause of action (for accounts stated) with proof that a bill, even if unitemized, was issued to a client and held by the client without objection for an unreasonable period of time"], lv

denied 89 NY2d 803 [1996]; see also Robson & Miller, LLP v Sakow, 121 AD3d 562, 563 [1st Dept 2014].

However, like all parties suing on an account stated, plaintiff "must establish that it sent invoices to defendant and that those invoices were received and retained by defendant without objection made in a reasonable period of time" (23rd St. Berk, LLC v Journey Flatiron LLC, 2024 NY Misc LEXIS 6707, \*4, 2024 NY Slip Op 51276 [U], \*\*2 [Sup Ct New York County] [G. Lebovits, J.S.C.], citing Morrison Cohen Singer & Weinstein, LLP v Brophy, 19 AD3d 161, 161-162 [1st Dept 2005]; LD Exch., Inc. v Orion Telcoms. Corp., 302 AD2d 565, 565 [2d Dept 2003]).

Plaintiff has not provided satisfactory prima facie proof of these elements. First, the purported invoice (NYSCEF Doc. No. 009) is a lengthy document that includes invoice numbers (without the actual invoices attached), various dates strewn about the document, and is not addressed to defendant. Further, the supporting affidavit of Yvon Cantave does not provide any details as to whether plaintiff mailed any of the purported invoices to defendant or that defendant received such invoices.

With respect to a cause of action for unjust enrichment, a plaintiff must demonstrate that (i) the other party was enriched, (ii) at that party's expense, and (iii) it is against equity and good conscience to permit the other party to retain what is sought to be recovered (Sperry v Crompton Corp., 8 NY3d

204, 215 [2007], citing Paramount Film Distrib. Corp. v State, 30 NY2d 415, 421 [1972]). Similarly to the breach of contract and account stated causes of action, the affidavit of Yvon Cantave does not conclusively establish that plaintiff performed uncompensated work from 2019 through 2021 (see NYSCEF Doc. No. 004, Affidavit of Yvon Cantave, providing only that "[plaintiff] fully performed all work at the direction of defendant and under my personal supervision").

In addition to defects addressed above, plaintiff provides insufficient proof of compliance with the additional mailing requirement of CPLR § 3215(g)(4)(ii) (see NSYCEF Doc. No. 005, Affirmation of John P. Ruggiero, Esq. [attesting to the additional mailing]).

Accordingly, it is hereby

ORDERED that plaintiff's motion (seq. no. 001), pursuant to CPLR § 3215, for a default judgment, against defendant PARKVIEW MANAGEMENT INC. is dismissed without prejudice; and it is further

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

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

7/17/2025

DATE

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

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: