

Wesco Ins. Co. v Sunfund Reinsurance, Ltd.

2025 NY Slip Op 32887(U)

July 23, 2025

Supreme Court, New York County

Docket Number: Index No. 653136/2024

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

WESCO INSURANCE COMPANY

Plaintiff,

- v -

INDEX NO. 653136/2024

MOTION DATE 05/07/2025

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

SUNFUND REINSURANCE, LTD.,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68

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

I. BACKGROUND

In this breach of contract action arising from a Reinsurance Agreement, the plaintiff previously moved for an order to conditionally strike the defendant’s answer and enter a default judgment unless the defendant complied with Insurance Law § 1213(c)(1) by procuring a license to do business in New York (MOT SEQ 001). On November 19, 2024, the court granted the motion to the extent that the defendant’s answer would be stricken if it failed to comply with the statute within 60 days, or by making a security deposit in the sum of \$1,050,956.86. The defendant failed to comply with the order.

In the meantime, the defendant’s attorney, Stefan B. Kalina, Esq., moved to be relieved as counsel (MOT SEQ 002). The court granted that motion on January 21, 2025, ordering the defendant to appoint a substitute attorney within 30 days. After the defendant failed to appear by counsel at the preliminary conference on April 17, 2025, the court stuck the defendant’s answer. The plaintiff now moves for a second time for leave to enter a default judgment pursuant to CPLR 3215 (MOT SEQ 003). No opposition is submitted. The motion is granted in part.

II. DISCUSSION

(A) First Cause of Action: Breach of Contract

“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).” Atlantic Cas. Ins. Co. v RJNJ Services, Inc., 89 AD3d 649 (2nd Dept. 2011).

The plaintiff’s proof establishes its breach of contract cause of action against the defendant, which requires (1) the existence of a contract, (2) the plaintiff’s performance under the contract, (3) the defendant’s 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). The plaintiff submits the subject Reinsurance Agreement between the parties, and an affirmation of its corporate litigation counsel, Michael T. Rasnick.

Under the Reinsurance Agreement, the defendant is required to establish a Reinsurance Trust Account for the sole and exclusive benefit of the plaintiff, and to maintain funds in this account, as collateral, of at least 102% of “Required Reserves”. The Required Reserves is reported in monthly cession statements delivered by the plaintiff to the defendant. Under Section 3.4 of the Reinsurance Agreement, the defendant is required to reimburse the plaintiff for monthly paid reinsured losses if, according to a cession statement, this amount was greater than the reinsurance premium.

In his affirmation, Rasnick avers that he has personal knowledge of the facts constituting the plaintiff’s claims. Rasnick states that the defendant did not fund the Reinsurance Trust Account as required under the Reinsurance Agreement. Additionally, the plaintiff submits an email it sent to the defendant on April 3, 2025, stating that the amount due the defendant owed with respect of the period from February 2024 to February 2025, inclusive, is \$1,787,755.80; and a February 2025 cession statement attached to the email. The plaintiff delivered the cession statement to the defendant on April 3, 2025, showing that the plaintiff paid reinsured losses of \$1,787,755.80 from February 2024 through February 2025. The plaintiff thus

adequately alleges the existence of the parties' contract, its own performance, the defendant's breach and resulting damages.

"When 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].'" See Curiale v Ardra Ins. Co., 88 NY2d 268, 279 (1996), *quoting* Rokina Opt. Co. v Camera King, 63 NY2d 728, 730 (1984); Amusement Bus. Underwriters v American Intl. Group, 66 NY2d 878, 880 (1985); Cole-Hatchard v Eggers, 132 AD3d 718, 720 (2nd Dept. 2015). However, if 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*; Transit Graphics v Arco Distrib., 202 AD2d 241, 241 (1st Dept. 1994). "The term 'sum certain' in this context contemplates a situation in which, once liability has been established, there can be no dispute as to the amount due." Reynolds Secur., Inc. v Underwriters Bank & Trust Co., 44 NY2d 568, 572 (1978). That is the case here.

The February 2025 Cession Statement shows that the plaintiff paid \$1,787,755.80 in reinsured losses from February 2024 to February 2025. The statement also shows that the reinsurance premium was \$15,075.17. Thus, as the monthly reinsured losses is greater than the reinsurance premium, the defendant is obligated to reimburse the plaintiff for the reinsured losses, in the amount of \$1,787,755.80

(B) Third Cause of Action: Specific Performance

In its third cause of action, the plaintiff seeks specific performance in the form of a directive compelling the defendant to deposit funds in the Reinsurance Trust Account sufficient to eliminate the Deficiency listed in the February 2025 Cession Statement, as required by Section 4.3. Specific performance is generally not awarded where money damages are sufficient to protect the interests of the injured party. See Sokoloff v Harriman Ests. Dev. Corp., 96 NY2d 409, 415 (2001). However, specific performance is enforced when a contract requires the defendant to deposit an amount for collateral as security in anticipation of possible losses. See BIB Constr. Co. v. Fireman's Ins. Co. of Newark, N.J., 214 AD2d 52 (1st Dept. 1995); see also Atl. Specialty Ins. Co. v Landmark Unlimited, Inc., 214 AD3d 472 (1st Dept. 2023); Colonial Sur. Co. v Eastland Const., Inc., 77 AD3d 581 (1st Dept. 2010). This is true when the failure to

deposit collateral is not intended to create liability but represents a security in anticipation of possible losses. See BIB Constr. Co. v. Fireman's Ins. Co. of Newark, N.J., supra.

Here, Section 4.3 obligated the defendant to maintain funds, as collateral, in the Reinsurance Trust Account in an amount no less than 102% of the Required Reserves, and that the failure to do so is a Deficiency. The Deficiency amount listed in the February 2025 cession statement is \$1,994,963.06. In his affirmation, Rasnick states that this amount also includes the \$1,787,755.80 owed to the plaintiff from its monthly reinsured losses. Thus, the plaintiff seeks specific performance compelling the defendant to deposit funds in the Reinsurance Trust Account for in the amount of \$202,207.26, the difference between \$1,994,963.06 and \$1,787,755.80. The plaintiff is entitled to this relief in order to protect its rights in anticipation of possible losses, namely, its monthly reinsured losses.

(C) Second Cause of Action: Declaratory Judgment

The plaintiff seeks the same relief in the alternative through its second cause of action for declaratory judgment. This relief is denied, as “a cause of action for a declaratory judgment is unnecessary and inappropriate when the plaintiff has an adequate, alternative remedy in another form of action, such as breach of contract.” Apple Records v Capitol Records, 137 AD2d 50, 54 (1st Dept. 1988); see CPLR 3001; NMC Residual Ownership L.L.C. v U.S. Bank N.A., 153 AD3d 284 (1st Dept. 2017); Singer Asset Fin. Co., LLC v Melvin, 33 AD3d 355 (1st Dept. 2006).

(D) Contractual Attorney's Fees

The plaintiff also seeks \$124,165.50 in attorney's fees. Under the general rule, attorney's fees are incidents of litigation, and a prevailing party may not collect them from the loser unless an award is authorized by agreement between the parties, statute or court rule. Hooper Assoc., Ltd. v AGS Computers, Inc., 74 NY2d 487, 491 (1989). Here, Section 7.4 of the Reinsurance Agreement provides for such relief. It is well settled that the reasonableness of legal fees “can be determined only after consideration of the difficulty of the issues and the skill required to resolve them; the lawyers' experience, ability and reputation; the time and labor required; the amount involved and benefit resulting to the client from the services; the customary fee charges for similar services; the contingency or certainty of compensation; the results obtained and the responsibility involved.” Morgan & Finnegan v Howe Chemical Co., Inc., 210 AD2d 62, 63 (1st Dept. 1994) [citations omitted]; see Matter of Freeman, 34 NY2d 1 (1974). An award of

reasonable attorney's fees is within the sound discretion of the court. See O'Mahony v Whiston, 224 AD3d 609 (1st Dept. 2024); Diakrousis v Maganga, 61 AD3d 469 (1st Dept. 2009). A court may reduce requested fees to eliminate unnecessary work (see Matter of SR, 169 AD3d 574 [1st Dept. 2019]), work that was duplicative or was unnecessarily performed by an attorney rather than a paralegal or secretary (JK Two LLC v Garber, 171 AD3d 496 [1st Dept. 2019]) or where the amount sought was unsubstantiated by the proof submitted. See Silverstein v Goodman, 113 AD3d 539 (1st Dept. 2014); Josefsson v Keller, 141 AD2d 700 (2nd Dept. 1988).

The plaintiff submits an affirmation of John P. McConnell, counsel at Smith, Gambrell & Russell, LLP, in which he summarizes the services rendered by his firm throughout this action and details the qualifications of the attorneys involved, including himself, partner Sam Keely, and paralegals Jasmine Ramirez and Peter Choi. McConnell and Keely each have more than 20 years of experience in complex insurance litigation. McConnell details that from April 2024 to February 2025, his firm's work included reviewing documents relevant to the plaintiff's claims, including the Reinsurance Agreement and monthly Cession Statements sent by the plaintiff to the defendant. Counsel seeks fees for work done on MOT SEQ 001, by which it sought an order to compel the defendant to comply Insurance Law § 1213(c)(1) or, in the alternative, post security in the amount of \$1,050,956.86. According to McConnell, this work was crucial to the plaintiff's litigation strategy to ensure that it could obtain recovery from the defendant had the litigation gone forward without the defendant's default. The plaintiff also submits the invoices sent to the plaintiff from April 2024 to February 2025 that detail the work performed, fees charged, and costs incurred.

Upon a review of the foregoing submissions, and in light of the standards set forth herein, the court finds that an award for \$124,165.50 is reasonable, with a 10% reduction. First, the hourly rates charged are reasonable for customary for New York and commensurate with counsel's expertise and reputation, and the results obtained in favor of the plaintiff. However, this is a relatively straight forward breach of contract action and both of the plaintiff's motions, MOT SEQ 001 and 003, were relatively simple and were unopposed. As to MOT SEQ 002, the defendant's former counsel's motion to withdraw, the plaintiff's counsel charged \$28,754.00. In fact, the plaintiff only opposed that motion to the extent it sought a stay pending an appearance by new counsel, submitting a four-page memo of law. Finally, a review of the invoices submitted reveals several instances of block billing or undetailed time entries. For these reasons, a reduction of fees is warranted. See Silverstein v Goodman, *supra*; Josefsson v Keller, *supra*.

III. CONCLUSION

Accordingly, upon the forgoing papers and this 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, on the plaintiff's first and third causes of action, and the motion is otherwise denied, and it is further

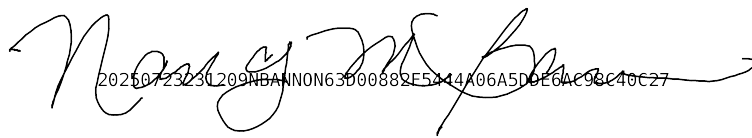
ORDERED that the Clerk shall enter judgment in favor of the plaintiff, Wesco Insurance Company, and against the defendant, Sunfund Reinsurance, Ltd., in the sum of \$2,950,000.00, plus costs and contractual interest from May 20, 2022, plus statutory interest from April 3, 2025, and it is further

ORDERED that Clerk shall enter a supplemental judgment in favor of the plaintiff Wesco Insurance Company and against the defendant Sunfund Reinsurance, Ltd., in the sum of \$111,748.95, and it is further

ORDERED that the defendant, Sunfund Reinsurance, Ltd., shall, within 30 days of the date of this order, deposit in the Reinsurance Trust Account at established at UMB Bank, N.A., the amount of \$202,207.26, and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.


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7/23/2025
DATE

NANCY M. BANNON, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED DENIED

GRANTED IN PART OTHER

APPLICATION: SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE