

**Advanced Tr. Mix Corp. v Mill Basin Bridge
Constructors, LLC**

2025 NY Slip Op 32940(U)

July 21, 2025

Supreme Court, Kings County

Docket Number: Index No. 507886/2024

Judge: Cenceria P. Edwards

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At an IAS Term, Part FRP1 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 30th day of April, 2025.

P R E S E N T:

HON. CENCERIA P. EDWARDS, C.P.A.,

Justice.

ADVANCED TRANSIT MIX CORP.,

Plaintiff(s),

-against-

MILL BASIN BRIDGE CONSTRUCTORS, LLC and
NEW YORK CITY DEPARTMENT OF
TRANSPORTATION

Defendant(s).

-----X
The following e-filed papers read herein:

NYSCEF Doc. Nos.:

Notice of Motion/Order to Show Cause/Petition/Cross-Motion and

Affidavits (Affirmations) and Exhibits 12,15 _____

Opposing Affidavits (Affirmations) and Exhibits None _____

Reply Affidavits (Affirmations) and Exhibits None _____

On March 19, 2024, this action was commenced in the Commercial Division Part- breach of a construction contract. Plaintiff “Advanced Transit Mix” seeks to recover monetary damages alleging Defendant “Mill Basin Bridge”, breached their agreement (the “Agreement”), account stated and was unjustly enriched.

ORDER

Calendar #(s):

Index #: 507886/2024

Mot. Seq. #(s): 1

Plaintiff now moves pursuant to CPLR §3215[f] for an order, *inter alia*, granting a default judgment against the purportedly non-answering Defendant Mill Basin Bridge. Plaintiff served Mill Basin Bridge with the Summons and Complaint on April 11, 2024, and filed its affidavit of service with the Court on September 26, 2024, NYSCEF DOC. NO. 5.

Plaintiff alleges Defendant Mill Basin Bridge entered a contract “Project” with the NYC Department of Transportation as contractor and in turn Mill Basin Bridge entered into an Agreement with Plaintiff Advanced Transit Mix to provide ready mix concrete and labor for the Project. Plaintiff avers that it fully performed its work under the Agreement and is entitled to payment of \$259,118.53, “no part of which has been paid, although duly demanded.”

CPLR §3215 [f]

A plaintiff seeking leave to enter a default judgment under CPLR §3215 must file proof of: (1) service of the summons and complaint or summons and notice, (2) the facts constituting the claim, and (3) the defendant’s default- failure to answer or appear. *see*, CPLR §3215[f]).

To demonstrate the facts constituting the cause of action, the “plaintiff need only submit sufficient proof to enable a court to determine if the cause of action is viable, since defaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them” (*Banks v 110-18 198th St. Corp.*, 205 AD3d at 869-870 [2023] [internal quotation marks omitted]).

"A court does not have a mandatory, ministerial duty to grant a motion for leave to enter a default judgment and retains the discretionary obligation to determine whether the movant has met the burden of stating a viable cause of action." *See, Barbetta v. NY Auto Find, Inc.*, 221 A.D.3d 851[2023] citing, *Paulus v Christopher Vacirca, Inc.*, 128 AD3d 116, 126, 6 N.Y.S.3d 572; *see Binder v Tolou Realty Assoc., Inc.*, 205 AD3d 870, 871, 166 N.Y.S.3d 551); *Barbetta v. Facchini*, 236 A.D.3d 623 [2025].

PROOF OF CLAIM

Plaintiff’s Advanced Transit Mix ‘principal’, Rocco Manzione, in support of a default judgment against Defendant Mill Basin Bridges submitted an affidavit attesting that Advanced Transit Mix performed all work due under the “Agreement” and that it remitted to Mill Basin

Bridge invoices detailing the total amount of \$259,118.53 “with the final invoice being sent on March 9, 2019, see NYSCEF DOC #15. Rocco Manzione further averred that “or about May 8, 2023, Advanced caused to be duly filed with the DOT, being the department having charge of such construction and the custody and disbursements of the public funds applicable to the contract for the Project, a Notice Under Mechanic's Lien Law for Account of Public Improvement (“Notice of Lien”), for the principal amount due to Advanced for the labor performed and materials furnished by Advanced as aforesaid, to wit, \$259,118.53 upon the monies of said public corporation applicable to the construction of such public improvement....”

Plaintiff’s Affidavit in support of a default judgment is general and lacks any specifics other than the amount it claims Defendant owes. Specifically, Plaintiff’s affidavit does not contain any statements or an iota of information as to the date the “Agreement” was executed, whether it was written or oral, the date and amount of ready mix/concrete provided to Defendant or where the concrete was allegedly delivered to. Nor does Plaintiff provide any information about the labor performed where, when, and how or by whom. Importantly, Rocco Manzione fails to state the basis of his knowledge or whether he examined and/or relied on any of the Plaintiff’s business records. *Barbetta v. NY Auto Find, Inc.*, 221 A.D.3d 851[2023].

The Court further notes that although Rocco Manzione refers to an Agreement and stated that invoices were delivered to the Defendant, Plaintiff Advanced Transit Mix has failed to attach any documentary proofs to substantiate its claims. Plaintiff did not provide any written agreement, contract, business records or any information surrounding when they entered into an agreement who negotiated/discussed the agreement on behalf of the entities, or any documents/business records it relied on to substantiate its claims. In the absence of any business records submitted and the sparsity of Rocco Manzione affidavit in support, Plaintiff’s submissions are insufficient to demonstrate proof of the facts constituting the claim *799 Crown St., LLC v Leblanc*, 203 AD3d 1117, 1119 [2022].

The proponent of a motion always bears the burden to affirmatively demonstrate entitlement to the relief sought, and this includes articulating coherent legal arguments supported by admissible evidence. Plaintiff’s affidavit and affirmation in support does not remotely attempt to substantiate or even discuss any facts/law to support Plaintiff’s claim.

“Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action. Here, neither the complaint nor Plaintiffs' motion papers include a copy” of the fully executed Agreement “which would at a minimum be "proof of the facts constituting the claim" (CPLR 3215[f]). *Welz v. Brown*, 228 A.D.3d 416 [2024]. Plaintiff’s affidavit in support of its proof of claim is glaringly deficient and conclusionary and requires this Court to unequivocally deny its request for a default judgment) (*see Yan Ping Xu v Van Zwiennen*, 212 AD3d 872 [2023]).

Plaintiff has failed to meet its burden of stating a viable cause of action against Defendant, Mill Basin Construction.

Accordingly, the above-referenced motion by Plaintiff for, *inter alia*, a Default Judgment is **DENIED** in its entirety.

The foregoing constitutes the Decision and Order of this Court.

E N T E R,

Dated: July 21, 2025



Hon. Cenceria P. Edwards, JSC, CPA