

Will-Do Plumbing Inc. v Prestige Mgt. Inc.

2025 NY Slip Op 33107(U)

July 17, 2025

Supreme Court, New York County

Docket Number: Index No. 655760/2024

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

WILL-DO PLUMBING INC.

Plaintiff,

- v -

PRESTIGE MANAGEMENT INC.,

Defendant.

-----X

INDEX NO. 655760/2024

MOTION DATE 03/04/2025

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, 12

were read on this motion to/for JUDGMENT - DEFAULT

APPEARANCES:

Redmond Law PLLC (Steven Edward Spada, Esq, and Adam Michael Diker, Esq) for plaintiffs.

HON. EMILY-MORALES-MINERVA, J.S.C.

In this breach of contract action, WILL-DO PLUMBING INC. (Plaintiff), moves, by notice of motion (motion seq. no. 001), pursuant to CPLR § 3215, for an order granting it a default judgment against PRESTIGE MANAGEMENT INC. (Defendant) to recover the sum of \$183,559.57 in unpaid contract amounts, plus statutory interest at 9% from March 31, 2024, totaling \$15,253.05 (see New York State Court Electronic Filing System [NYSCEF] Doc. No. 003, Notice of Motion). Defendant does not appear or submit opposition.

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, 51 [2022] [quotations and citations omitted] [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 submits the summons and verified complaint (NYSCEF Doc. No. 1), the affirmation of counsel, Steven E. Spada, Esq. (NYSCEF Doc. No. 4), and a collection of documents purporting to reflect invoices and correspondence between the parties (see NYSCEF Doc. No. 5, Unpaid Invoices; see also NYSCEF Doc. No. 6; Notice of Default). However, plaintiff does not submit any written agreement, contract, or purchase order executed by defendant nor does the affirmation of counsel provide firsthand confirmation of such. The invoices, which are internally generated, are not accompanied by any indication of acceptance by defendant, and plaintiff's demand letter is similarly unsigned and self-serving (see NYSCEF Doc. No. 6,

Notice of Default). The verified complaint alleges the existence of multiple contracts but fails to annex or identify any specific agreement, date, or contractual provision upon which liability is predicated (see NYSCEF Doc. No. 1). Therefore, even though plaintiff attaches invoices totaling \$183,559.57, they do not suffice to establish, without more, the existence of a binding agreement or the terms thereof.

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]; 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"]).

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 retaining the invoice without objection will be considered acquiescence as to its correctness (Lapidus & Assoc., LLP v Elizabeth St., Inc., 92 AD3d 405, 405 [1st Dept 2012]; 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 invoices consist of multiple pages listing internal invoice numbers, addresses, and amounts, but do not include any underlying agreements, purchase orders, or acknowledgments signed by defendant (NYSCEF Doc. No. 5; Unpaid Invoices). These invoices are not addressed to any specific individual at defendant's office, and plaintiff offers no evidence demonstrating that the invoices were ever mailed to, received by, or retained by defendant. Further, the affirmation of plaintiff's counsel, Steven E. Spada, Esq., does not include any assertion of personal knowledge regarding the mailing or receipt of the invoices, nor is there any affidavit from a principal of plaintiff attesting to such facts (see NYSCEF Doc. No. 4; Affirmation in Support of Motion for Default Judgment).

With respect to a cause of action for unjust enrichment, a plaintiff must show that (i) the defendant was enriched, (ii) at plaintiff's expense, and (iii) it would be against equity and good conscience to permit the defendant to retain the benefit (see Sperry v Crompton Corp., 8 NY3d 204, 215 [2007]; Paramount Film Distrib. Corp. v State, 30 NY2d 415, 421 [1972]). As with plaintiff's breach of contract and account stated claims, the record lacks any affidavit from a person with firsthand knowledge affirming that plaintiff performed specific, uncompensated work at defendant's request. Plaintiff's motion relies entirely on counsel's affirmation and internally generated billing summaries, which are insufficient to establish the equitable elements of the claim.

In addition to the foregoing deficiencies, plaintiff provides insufficient proof of compliance with the additional mailing requirement of CPLR § 3215(g)(4)(ii). Although plaintiff submits a letter dated January 8, 2025, purporting to effect service of the pleadings by first-class mail (NYSCEF Doc. No. 9), there is no accompanying affidavit of service or postal receipt demonstrating that such mailing was properly completed.

Accordingly, it is hereby

ORDERED that plaintiff's motion (seq. no. 001), pursuant to CPLR § 3215, for a default judgment, against defendant PRESTIGE MANAGEMENT IMC. 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, J.S.C.

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