

Phillips Auctioneers LLC v Grosso

2025 NY Slip Op 33241(U)

August 27, 2025

Supreme Court, New York County

Docket Number: Index No. 651782/2020

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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PHILLIPS AUCTIONEERS LLC,	INDEX NO.	<u>651782/2020</u>
Plaintiff,	MOTION DATE	<u>-</u>
- v -	MOTION SEQ. NO.	<u>010</u>
PIER FRANCO GROSSO,	DECISION + ORDER ON	
Defendant.	MOTION	

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 010) 264, 265, 266, 267, 268, 269, 270, 271, 272, 273

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

In mot. seq. no. 010, plaintiff Phillips Auctioneers LLC moves, pursuant to CPLR 3215, for a default judgment against defendant Pier Franco Grosso.

“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 NY Misc LEXIS 1789, *6-7, 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 defendant was served with the complaint, which was deposited at Monaco City Hall by a bailiff and sent to defendant by certified mail to his residence located at 15 rue Basse à Monaco (98000) on October 12, 2020. (NYSCEF 14, aff of service [original]; NYSCEF 15 aff of service [translated].) Defendant answered the complaint on February 3, 2021. (NYSCEF 38, Answer.) Plaintiff also complied with the additional service requirements of CPLR 3215(g)(3) by serving defendant with a copy of the summons and complaint via first-class mail at his residence on December 19, 2020. (NYSCEF 31, aff of additional service ¶ 3.)

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 made by the party.” Here, plaintiff submits an affidavit of Hartley Waltman, plaintiff’s general counsel, in support of this application. (NYSCEF 266, Waltman aff ¶ 1.)

Here, plaintiff alleges one claim for breach of a consignment agreement executed by the parties on November 10, 2016 (Consignment Agreement). (NYSCEF 269, Amended Complaint; NYSCEF 267, Consignment Agreement.) Specifically, defendant consigned artwork to plaintiff in exchange for an advance of \$1.5 million. (NYSCEF 266, Waltman aff ¶ 5; NYSCEF 267, Consignment Agreement.)

“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].)

Waltman avers that

“[u]nder Paragraph 10(a)(iii) of the Consignment Agreement, [plaintiff] ha[d] the right to withdraw the Work at any time before sale if ‘any representation or warranty’ that [defendant] made to [plaintiff] was ‘materially inaccurate’ or [plaintiff] ‘reasonably doubt[s]’ the accuracy of any representation. Under Paragraph 10(a)(iv) of the Consignment Agreement, [plaintiff] has the right to withdraw the Work at any time before sale if [defendant] materially breaches the Agreement.” (NYSCEF 266, Waltman aff ¶ 29; see also NYSCEF 267, Consignment Agreement ¶ 10(a) [plaintiff “may withdraw any Lot at any time before sale without any liability if in [plaintiff’s] sole judgment: (i) there is reasonable doubt as to its authenticity, authorship or attribution; (ii) there is doubt as to [defendant’s] title or [defendant’s] authority to place it for sale; (iii) any representation or warranty that [defendant has] made to [plaintiff] is materially inaccurate or we reasonably doubt its accuracy; (iv) [defendant has] breached, or indicated that [defendant] intend[s] to breach, any provision of this Agreement in any material respect; (v) the Lot is damaged to the extent that it is not in the condition in which it was when [plaintiff] agreed to sell it; or (vi) other just cause exists”].)

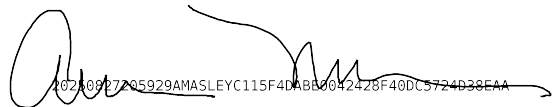
Plaintiff determined that defendant made “materially inaccurate” representations and warranties, and that the artwork’s authenticity was questionable, and thus, withdrew from the sale. (NYSCEF 266, Waltman aff ¶ 29.) Plaintiff asserts that if it withdrew the artwork from the sale due to the reasons listed in paragraph 10 (a)(iii) or (iv) of the Consignment Agreement, then pursuant to paragraph 10(b), defendant was required to pay plaintiff (i) the advance of \$1,500,000, (ii) a withdrawal fee of \$625,000 (25% of the latest low pre-sale estimate of the artwork at \$2,500,000), and (iii) out-of-pocket expenses. (Waltman aff ¶ 30; NYSCEF 267, Consignment Agreement ¶ 10[b].) Defendant has not paid any of the amounts above. (NYSCEF 266, Waltman aff ¶ 31.) Plaintiff submits sufficient proof of its claim for breach of the Consignment Agreement. The court notes that, in support of its request for out-of-pocket expenses in the form of attorneys’ fees, plaintiff submits an affirmation of services, invoices, and attorney bios. (NYSCEF 271, 272, & 273.)

Proof of Default

As the result of violating several court orders, the court granted plaintiff's motion to strike defendant's answer with counterclaims. (NYSCEF 248, Decision and Order [mot. seq. no. 007].) Thus, plaintiff submitted sufficient proof of default. (*CPS 227 LLC v Brody*, 135 AD3d 607, 608 [1st Dept 2016] [holding that "plaintiff was entitled to have the answer struck and a default judgment entered on the complaint"].)

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 Phillips Auctioneers LLC against defendant Pier Franco Grosso in the sum of \$1,500,000 plus interest at the rate of 5% per annum from the date of February 12, 2018 until the date of the decision on this motion, plus a withdrawal fee of \$625,000 and attorneys' fees of \$1,230,102.964 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. Plaintiff shall have execution thereon.



8/27/2025

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: