

Woodmart LLC v American Copper Bldg. LLC

2025 NY Slip Op 33302(U)

September 2, 2025

Supreme Court, New York County

Docket Number: Index No. 653824/2024

Judge: Emily Morales-Minerva

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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. EMILY MORALES-MINERVA PART 42M

Justice

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INDEX NO. 653824/2024

WOODMART LLC, D/B/A PRIME CABINETREE.

MOTION DATE 06/07/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

AMERICAN COPPER BUILDING LLC,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

were read on this motion to/for JUDGMENT - DEFAULT

APPEARANCES:

Todd Alan Gabor, Cedarhurst, NY (Todd Gabor, Esq., of counsel), for plaintiff.

EMILY MORALES-MINERVA, J.S.C.

In this action, plaintiff WOODMART LLC, D/B/A PRIME CABINETREE, moves, by notice of motion (mot. seq. no. 001), pursuant to CPLR § 3215, for an order granting it a default judgment against defendant AMERICAN COPPER BUILDING LLC in the amount of \$26,750.65, plus interest at the statutory rate from February 10, 2024. Defendant does not appear or submit opposition.

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

BACKGROUND

Plaintiff WOODMART LLC, D/B/A PRIME CABINETREE (plaintiff) alleges that it sold, delivered, and installed a variety of kitchen countertops to defendant AMERICAN COPPER BUILDING LLC (defendant), a domestic limited liability company, from September 13, 2023, through January 11, 2024, for an agreed upon price of \$39,005.11 (see New York State Court Electronic Filing System [NYSCEF] Doc. No. 001, Complaint). Plaintiff alleges that although it duly demanded payment from defendant, defendant failed to make any payments, resulting in an outstanding balance of \$39,005.11 (see id.).

Thereafter, plaintiff commenced the instant action against defendant, alleging three causes of action: (1) services rendered; (2) account stated; and (3) unjust enrichment (see id.). On September 12, 2024, plaintiff waived the cause of action sounding in unjust enrichment (see NYSCEF Doc. No. 008, Affirmation of Todd A. Gabor, Esq.). Defendant failed to answer or otherwise respond to the complaint.

Now, plaintiff moves, by notice of motion (seq. no. 001), for an order granting it leave to enter a default judgment against defendant (see CPLR § 3215 [governing default judgments]). Defendant neither appeared nor filed a response.

In support of the motion, plaintiff submits an affidavit of service of the summons and complaint, reflecting a service date of August 02, 2024 (NYSCEF Doc. No. 13 [reflecting that service of process was effectuated upon the Secretary of State in accordance with Limited Liability Company Law § 303]); an affirmation of additional service, dated September 10, 2024 (NYSCEF Doc. No. 14); a copy of 27 invoices directed to "American Cooper Buildings", with an address of "626 1st Ave New York, NY 10016", dating from September 13, 2023 through January 11, 2024 (NYSCEF Doc. No. 15); a copy of a check made out to plaintiff from "American Cooper Building LLC" in the amount of \$7,552.68, and dated July 13, 2023¹ (NYSCEF Doc. No. 16); an affidavit of Sanel Kolenovic, Managing Member of plaintiff (NYSCEF Doc. No. 11); and plaintiff's Certificate of Alternate Name (NYSCEF Doc. No. 17).

ANALYSIS

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

¹ Plaintiff acknowledges that this check covered payment for previous services rendered to defendant, and that it submits this check to demonstrate the lawful company name of defendant (see NYSCEF Doc. No. 11, Affidavit of Sanel Kolenovic).

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])).

Here, plaintiff alleges a cause of action sounding in "services rendered", which is not a valid cause of action (see NYSCEF Doc. No. 001, Complaint). Based on the allegations contained in the complaint, plaintiff appears to allege a cause of action sounding quantum meruit.

"The claim to recover for . . . services [rendered] may be viewed as stating a cause of action sounding in quantum meruit,

for which there must be evidence of (1) the performance of services in good faith, (2) the acceptance of the services by the person to whom they are rendered, (3) an expectation of compensation therefor, and (4) the reasonable value of the services allegedly rendered" (Stephan B. Gleich & Associates v Gritsipis, 87 AD3d 216 [2d Dept 2011]; Farina v Bastianich, 116 AD3d 546, 548 [1st Dept 2014] [stating the same]).

Plaintiff's submissions fall short of such prima facie validity. It's complaint merely alleges in a conclusory fashion that "plaintiff, at the specific instance and request of defendant, sold, delivered and installed a variety of kitchen countertops to the defendant all at the agreed upon price and value of \$39,005.11" (NYSCEF Doc. No. 001, Complaint; see also NYSCEF Doc. No. 11, Affidavit of Sanel Kolenovic [repeating same conclusory allegations]). Further, plaintiff submits no supporting proof or facts from which the court could determine plaintiff's performance of services, or the acceptance of services by defendant. The submission of 27 invoices -- without any proof of payment or of the like -- is insufficient to establish a quantum meruit cause of action.

The court next addresses plaintiff's claim sounding in account stated. "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"]).

Where, as here, a plaintiff is asserting an account stated claim -- it "does not have to establish the reasonableness of its fee" because the defendant'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 Fed. Exp. Corp. v Fed. Jeans, Inc., 14 AD3d 424 [1st Dept 2005]).

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, [Sup Ct NY Cnty] [G. Lebovits, J.S.C.], citing Morrison Cohen Singer & Weinstein, LLP v Brophy, 19 AD3d 161, 161-162 [1st Dept 2005], and LD Exch., Inc. v Orion Telecom. Corp., 302 AD2d 565 [2d Dept 2003]).

Plaintiff has not provided satisfactory prima facie proof of these elements. Though plaintiff submits copies of 27 invoices, the affidavit of Sanel Kolenovic, Managing Member of plaintiff, only indicates, in a conclusory fashion, that the invoices were "sent" to defendant (see NYSCEF Doc. No. 11, Affidavit of Sanel Kolenovic). This statement, without either proof of mailing or proof of a standard office procedure designed to ensure the invoices are properly addressed and

mailed, is insufficient to establish an account stated cause of action.

Further, Sanel Kolenovic states, in his affidavit, that "on or about October 03, 2024, after the commencement of this action, defendant made [two] partial payment[s]" (id.). This statement alone fails to provide sufficient specificity to satisfactorily establish defendant's assent to the balance.

In addition to the defects addressed above, the affirmation of additional service is deficient. CPLR § 3215 (g)(4)(ii) requires the additional service of the summons be "accompanied by a notice to the corporation that service is being made or has been made pursuant to [Business Corporation Law § 306 (b) or Limited Liability Law § 303]." Here, despite the fact that service of the summons and complaint was effectuated by the Limited Liability Company Law § 303 on August 02, 2024, the affirmation provides that the summons and complaint were served pursuant to Business Corporation Law § 306 on August 05, 2024 (see NYSCEF Doc. No. 14).

Accordingly, it is hereby

ORDERED that plaintiff's motion (seq. no. 001), pursuant to CPLR § 3215, for a default judgment, against defendant AMERICAN COPPER BUILDING LLC 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.

9/04/2025
DATE

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

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