

Energio LLC v 409 Edgecombe Ave. Hous. Dev. Fund Corp.

2025 NY Slip Op 33447(U)

September 9, 2025

Supreme Court, New York County

Docket Number: Index No. 650125/2025

Judge: James G. Clynes

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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. JAMES G. CLYNES PART 39M
Justice

-----X
ENERGO LLC, INDEX NO. 650125/2025
Plaintiff, MOTION DATE 03/18/2025
MOTION SEQ. NO. 001

- v -

409 EDGEcombe AVENUE HOUSING DEVELOPMENT
FUND CORPORATION,
Defendant.

**DECISION + ORDER ON
MOTION**

-----X
The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11
were read on this motion to/for JUDGMENT - DEFAULT.

Plaintiff Energo LLC moves, pursuant to CPLR 3215, for a default judgment against
defendant 409 Edgcombe Avenue Housing Development Fund Corporation. Defendant has not
filed opposition.

Default Judgment

On a motion for leave to enter a default judgment, “the applicant shall file proof of service
of the summons and the complaint . . . and proof of the facts constituting the claim, the default and
the amount due by affidavit made by the party” (CPLR 3215 [f]). “Where a verified complaint has
been served, it may be used as the affidavit of the facts constituting the claim and the amount due”
(*id.*). A defendant who has defaulted is “deemed to have admitted all factual allegations contained
in the complaint and all reasonable inferences that flow from them” (*Woodson v Mendon Leasing
Corp.*, 100 NY2d 62, 71 [2003]).

“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” (*Feffer v Malpeso*,

210 AD2d 60, 61 [internal citation omitted]). “The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts” (*id.*). “Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action, but the standard of proof is minimal” (*Petty v Law Office of Robert P. Santoriella, P.C.*, 200 AD3d 621, 621 [1st Dept 2021] [internal citation and quotation marks omitted]). “This minimal requirement is necessary to assure that the action has a jurisdictional basis” (*Zelnik v Bidermann Indus. U.S.A., Inc.*, 242 AD2d 227, 228 [1st Dept 1997] [internal citation omitted]). “Where a valid cause of action is not stated, the party moving for judgment is not entitled to the requested relief, even on default” (*Green v Dolphy Constr. Co., Inc.*, 187 AD2d 635, 636 [2d Dept 1992]).

Where a default judgment is sought against a corporation which had been served by service upon the Secretary of State pursuant to Business Corporation Law (BCL) 306 (b), “an affidavit shall be submitted that an additional service of the summons by first class mail has been made upon the defendant corporation at its last known address at least twenty days before the entry of judgment” (CPLR 3215 [g] [4] [i]). This additional service “may be made simultaneously with or after service of the summons on the defendant corporation” pursuant to BCL 306 (b), “and shall be accompanied by a notice to the corporation that service is being made or has been made pursuant to that provision” (CPLR3215 [g] [4] [ii]). “An affidavit of mailing pursuant to this paragraph shall be executed by the person mailing the summons and shall be filed with the judgment” (*id.*).

The Motion

Plaintiff’s timely motion, dated and efiled on NYSCEF on March 18, 2025, includes counsel’s affirmation, an affirmation by plaintiff’s Vice President of Operations (VP) (VP affirmation), and copies of the summons and complaint, the affidavits of service, the agreement between the parties dated December 6, 2023, and the invoices. Plaintiff’s notice of motion seeks default judgment on the complaint’s first cause of action for breach of contract and the second

cause of action for account stated. As the supporting papers focus on obtaining default judgment for the breach of contract claim, the court similarly will do so.

Counsel's Affirmation

The affirmation of plaintiff's counsel (NYSCEF Doc No. [Doc] 8), dated March 18, 2025, includes the following. Plaintiff electronically filed the summons and complaint on January 9, 2025 and on January 16, 2025 effectuated service upon defendant corporation, by service upon the Secretary of State. On January 21, 2025, plaintiff mailed to defendant, by first class mail, the notice to corporation pursuant to BCL 306, notice of electronic filing, summons and complaint and corresponding exhibits, thereby providing the additional notice as required by CPLR 3215(f)(4)(i). The time for defendant to respond or otherwise move with respect to the complaint has expired, and other communications have not been received by counsel's office. The complaint was verified by VP, plaintiff's authorized representative who had personal knowledge of the facts. In counsel's affirmation, plaintiff asserts it is entitled to a default judgment in the amount set forth in the VP affirmation: "the amount of \$103,903.73, plus interest at the rate of 18% per annum from March 13, 2025 until the date of the judgment, plus the costs relative to this action" (Doc 8 at 3).

The Summons, Complaint, and Accompanying Verification

Plaintiff asserts two causes of action in its summons and complaint dated January 7, 2025 (Docs 1, 9). The first cause of action is for breach of contract and the second cause of action is for account stated. Plaintiff's allegations include the following: Pursuant to the credit application and agreement (Agreement), attached as an exhibit to the complaint; (Doc 2, 9), plaintiff performed the agreed-upon services and provided defendant with oil, gas and/or petroleum services. Plaintiff issued invoices to defendant through its authorized agent; the invoices are attached collectively as an exhibit to the complaint (Doc 3, 9). Defendant failed to remit payment although duly demanded.

In the complaint, plaintiff alleges it is entitled to the following damages: \$68,830.82 for the cost of services, plus “finance charges at 1.5 % per month under the Agreement through December 31, 2024 totaling \$3,388.27, and attorneys fees in the amount of 1/3 of the outstanding balance ($\$68,830.82 + \$3,888.27 = \$72,719.09$; $\$72,719.09 + \$24,239.70$) for a total balance owed through December 31, 2024 of \$96,958.79” (*id.* at ¶ 4). “There remains a total outstanding balance of \$96,958.79 associated with Defendant’s account” (*id.* at ¶ 8).

In the first cause of action, plaintiff alleges as follows: its performance of the Agreement, its sending of invoices to defendant; defendant’s failure to timely object or otherwise dispute the amount, and defendant’s failure to remit payment. Plaintiff further alleges that as a result of defendant’s breach of the Agreement, defendant is liable to plaintiff “for \$68,830.82, plus interest at the rate of 1.5% per month through December 31, 2024 in the amount of \$3,888.28, plus attorneys fees of 1/3 of the amount owed ($\$24,239.70$) for a total balance through December 31, 2024 of \$96,958.79” (*id.* at ¶ 14). In the prayer for relief for breach of contract, plaintiff requests judgment in its favor against defendant, and an award of no less than \$96,958.79, plus costs and interest at the rate of 1.5 % per month from January 1, 2025.

In the second cause of action for account stated, plaintiff alleges as follows. It performed services pursuant to the Agreement and sent invoices to defendant; defendant failed to timely object or to dispute the invoices; plaintiff is entitled to full payment of the invoices pursuant to the Agreement. In the prayer for relief for the account stated claim, plaintiff seeks judgment in its favor of no less \$72,719.09, plus costs and interests at the rate of 1.5% from January 1, 2025.

While not labeled as a verified complaint, the complaint is accompanied by a verification by plaintiff’s Vice President of Operations (VP), in the form of an affidavit sworn to on January 7, 2025 (VP aff) (Doc 1). The VP attests that: he is the authorized representative of plaintiff, a limited liability company; the complaint is true to his own knowledge, allegations made upon

information and belief he believes to be true; and, allegations not based on his own knowledge are investigations he caused to be made and information he acquired in the course of his duties and from plaintiff's books and papers.

Service

Plaintiff effectuated service upon defendant corporation by service upon the Secretary of State on January 16, 2025, as set forth in the duly affirmed affirmation of service attached as an exhibit to the motion and as previously filed (NYSCEF Doc. Nos. [Doc] 10, 4). Plaintiff also attaches to the motion, and previously filed, an affidavit of service upon defendant of the notice to corporation pursuant to BCL 306, the notice of electronic filing, the summons and complaint, and corresponding exhibits (Docs 10, 5).

The Affirmation of Plaintiff's Vice President of Operations

The VP affirmation contains the requisite affirmation language pursuant to CPLR 2106 (b), and repeats and expounds on the VP aff which accompanied the complaint, including the following (Doc 7). The parties' agreement, entered into on or about December 6, 2023, provides for full payment within 30 days after an invoice is rendered and that in the event of default, defendant "would owe interest at the rate of 1.5 % per month together with collection costs in the amount of 1/3 of Defendant's outstanding balance (*id.* at ¶ 10). Plaintiff provided services to defendant and sent invoices to defendant's disclosed agent; neither defendant nor the agent objected to the services and invoices. Despite due demand, as of the date of the VP's affirmation, defendant has failed to remit payment of the amount due. Based on the VP's review of plaintiff's records for defendant, kept and maintained in the ordinary course of plaintiff's business, he affirms that the unpaid invoices total \$68,830.82, which reflects a partial payment on invoice #24385 resulting in a remaining balance on that invoice of \$3,865.39. He further affirms that interest has accrued on the unpaid balance at the Agreement's rate of 1.5 % per month from June 18, 2024, the date that

is 30 days after the last unpaid invoice was rendered, for a total amount through March 13, 2025, the date of his affirmation, in the amount of \$ 9,096.98. Additionally, he affirms that plaintiff is entitled under the Agreement to charge defendant its collection fees of 1/3 of the amount owed, or \$25, 975.93. He therefore states that defendant owes plaintiff a total of \$103, 903.73, and requests judgment on this amount plus interest on the unpaid amount at the rate of 18 % per annum from March 13, 12025, plus the action's costs and disbursements.

Discussion

Except for the amount of the requested judgment as calculated in the motion papers, plaintiff meets its burden and demonstrates that it is entitled to a default judgment in its favor. Plaintiff demonstrates service of the complaint and additional notice, that the time for defendant to answer or otherwise move has expired, and that the motion is made within one year of default. Additionally, plaintiff sufficiently meets its requisite burden of proof of the facts constituting the claim by the VP aff attached to the complaint and the VP affirmation submitted with the motion papers, and sets forth the amount of the judgment plaintiff seeks.

The court, however, declines to grant and denies that part of plaintiff's requested award that is not supported by the express terms of the Agreement, specifically, plaintiff's request for 18 percent annual interest not just on the past due balance, but also on the interest charged, as this would amount to interest on interest. The court also declines to grant and denies that part of plaintiff's requested award that seeks 18 percent annual interest on the agreed-upon 1/3 for plaintiffs' fees/collection costs as set forth in the complaint, as the Agreement does not so provide. So too the court declines to grant and denies plaintiff's request which seeks costs and disbursements with entry of judgment, as this would amount to double recovery for such amounts.

Contrary to plaintiff's assertions, these amounts are not recoverable pursuant to the relied-upon Agreement's provision labeled billing and payment. There, the "Applicant," also referenced as the "Customer" (defendant herein):

"agrees to pay each invoice in full when presented. If any invoice is not paid within 30 days, Applicant further agrees to pay (1) interest in the amount of 1.5 % per month, which shall continue to accrue in collections, on any past due balance and (2) all costs of collection, including attorneys' fees (even if suit is not filed) (which is 1/3 of amounts owed by Customer), and collection agency fees, whether contingency-based fees or otherwise, incurred as a result of a default in payment." (Docs 2, 9, at 2).

The Agreement does not expressly provide that interest accrues on the interest; it does not provide for compound interest. Thus, plaintiff's request for the amount set forth in its motion papers, which awards compound interest, is denied. So too the Agreement does not provide for 1.5 percent monthly interest on the 1/3 amount for attorneys fees/collections fees. Thus, plaintiff's request for 1.5 percent monthly interest on the calculated amount for such category as requested in its complaint, is denied. Without an express agreement for compound interest or monthly or compounded interest of 1.5 % on attorneys' fees/collection costs, such amounts are not implied and are not recoverable (*B. King Chick LLC v Organization for Defense of Four Freedoms for Ukraine, Inc.*, 227 AD3d 536, 536 [1st Dept 2024]; *TKS Realty, LLC v 391 Broadway LLC*, 192 AD3d 572, 573 [1st Dept 2021]; *R.F. Schiffman Assoc., Inc. v Baker & Daniels LLP*, 147 AD3d 482, 483 [1st Dept 2017]). Any vagueness in the Agreement's provision works against plaintiff (*see B. King Chick LLC*, 227 AD3d at 536). The court also declines and denies that part of plaintiff's request for the judgment to be entered with an award of costs and disbursements, as it would amount to double recovery. The judgment already includes the Agreement's provision of an award of collection costs/attorneys' fees.

Accordingly, it is

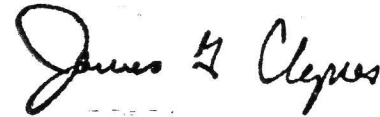
ORDERED that plaintiff's motion for a default judgment against defendant pursuant to CPLR 3215 is granted as indicated; and it is further

ORDERED that plaintiff Energo LLC is awarded a money judgment against defendant 409 Edgecombe Avenue Housing Development Fund Corporation in the amount of:

(i) \$68,830.82 with interest on that amount of \$3,888.27, totaling \$72,719.09; plus (ii) interest on the amount of \$68,830.82 at 18% annually from January 1, 2025; plus (iii) attorneys' fees/collections costs of \$24,239.09; (iv) without costs and disbursements; and it is further

ORDERED that plaintiff, within 20 days of the uploading of this decision and order on NYSCEF, shall serve a copy of this decision and order with notice of its entry on defendant by mail and on the office of the County Clerk, which shall enter judgment accordingly.

This constitutes the decision and order of the court.



JAMES G. CLYNES, J.S.C.

09/09/2025
DATE

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