

**ASP Watch Guard & Patrol Inc. v 17th St.
Entertainment II LLC**

2025 NY Slip Op 33517(U)

September 19, 2025

Supreme Court, New York County

Docket Number: Index No. 650794/2023

Judge: Lyle E. Frank

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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. LYLE E. FRANK **PART** **11M**

Justice

-----X

ASP Watch Guard & Patrol Inc.

Plaintiff,

- v -

17th Street Entertainment II LLC et al

Defendant.

-----X

INDEX NO. 650794/2023

MOTION DATE 05/21/2025

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61

were read on this motion to/for EXTEND - TIME.

Upon the foregoing documents, the motion is denied.

Background

Plaintiff ASP Watch Guard & Patrol Inc. brought this underlying proceeding in December of 2023, alleging that various parties had defaulted on certain contracts for security work. The complaint had claims for breach of contract, unjust enrichment, and account stated. Defendant Katz Group USA Corp. brought a pre-answer motion to dismiss based on failure to state a cause of action, which was granted in an order dated August 15, 2023. That order severed and continued the complaint as against the remaining defendants. No other defendant answered or otherwise replied to the complaint. According to Plaintiff, before moving for default or other judgment against the defendants Richard Akiva, Jaqueline Akiva, and Danucht Entertainment LLC (collectively, the “Akiva Defendants”), they wished to see how a related federal action was resolved regarding the disposition of certain assets and bank accounts. CPLR § 3215(g) default notices had been drafted in 2023, but it does not appear that they were sent.

Then in April of 2025, this Court sent a notice to the parties that an in-person conference had been scheduled. Upon receiving that notice, counsel for Plaintiff checked in on the status of the federal action and discovered that it had been resolved in April of 2024, and that the default notices had not been filed on the docket.

Discussion

Plaintiff now brings the present motion seeking to have their failure to move for default excused or for leave pursuant to CPLR § 3012(b) to serve an amended complaint. The Akiva Defendants oppose. For the reasons given below, the motion is denied, and the complaint is dismissed.

Plaintiff Has Not Shown Sufficient Cause

Under CPLR § 3215(c), a complaint must be dismissed when the plaintiff fails to take proceedings for the entry of judgment within one year of default, “unless sufficient cause is shown why the complaint should not be dismissed.” If no sufficient cause is shown, then dismissal of the complaint is mandatory. *Wells Fargo Bank, N.A. v. Martinez*, 181 A.D.3d 470, 471 [1st Dept. 2020]. In order to demonstrate sufficient cause, a plaintiff must “demonstrate both a reasonable excuse for the period of non-prosecution and merit to the action.” *Sports Legends, Inc. v. Carberry*, 38 A.D.3d 470, 470 [1st Dept. 2007]. Respectfully to Plaintiff’s counsel, the Court does not see that a reasonable excuse has been presented. It was not until the Court made the parties aware of the long lapse in the docket that any action was taken. Furthermore, nothing in the related federal action could have prevented Plaintiff from seeking a default judgment, it could only have impacted judgment recovery. To the extent that any claims in the federal action would have interfered with Plaintiff’s claims here, they could have moved to intervene there, but

they failed to do so. Without a reasonable excuse, sufficient cause has not been shown, and the complaint must be dismissed.

Plaintiff Has Not Shown a Meritorious Claim

Although the Court does not need to reach the issue of whether Plaintiff has established a meritorious claim, for the interests of thoroughness the Court will do so here. The claims pled against the Akiva Defendants in the proposed amended complaint are for breach of contract based on two security contracts, unjust enrichment based on a failure to be paid under the two contracts, and account stated for invoices sent pursuant to the two contracts. Plaintiff also seeks to impose liability on the Akiva Defendants through a piercing the corporate veil theory. Starting with this last claim, Plaintiff makes no detailed factual allegations but merely restates the elements of a piercing the corporate veil theory in a conclusory fashion. This is insufficient to state a claim for liability pursuant to piercing the corporate veil. *See, e.g., G&Y Maintenance Corp. v. Core Cont. Constr. LLC*, 215 A.D.3d 553, 554 [1st Dept. 2023]. Even the allegation that a defendant used their domination and control to cause another to breach a contractual obligation is “insufficient to pierce the corporate veil.” *Id.* Plaintiff has pled no facts that show that any of the Akiva Defendants used their control of another entity to perpetuate fraud or other wrongs, as is required to pierce the corporate veil. *Morris v. State Dep’t of Taxation & Fin.*, 82 N.Y.2d 135, 141 – 42 [1993]. There has not been a demonstration sufficient to pierce the corporate veil in this matter.

Moving on to the breach of contract claims pled against the Akiva Defendants, these claims fail for the simple reason that none of the Akiva Defendants are parties to the two contracts at issue. Those contracts were made with entities 1 Oak and Up & Down. An essential element of a breach of contract claim is the existence of a contract and an enforceable agreement

between the parties. *Harris v. Seward Park Hous. Corp.*, 79 A.D.3d 425, 426 [1st Dept. 2010].

There can be no breach of contract claim against non-parties to the contract.

The unjust enrichment claim fails because the existence of the two contracts precludes recovery against the Akiva Defendants under this theory. The claim is premised on the same facts and alleged wrongs as the breach of contract theory. But a “plaintiff cannot maintain a quasi contract claim against a third-party nonsignatory to a contract that covers the subject matter of the claim.” *FM Cost Containment, LLC v. +42 W. 35th Prop. LLC*, 203 A.D.3d 426, 427 [1st Dept. 2022]. Plaintiff cannot pursue an unjust enrichment claim against the Akiva Defendants because the subject matter of the claim — the non-payment for services performed under the two contracts — is covered by a contract to which the Akiva Defendants are nonsignatory third parties.

The account stated claim fails because the invoices in question were not sent to the Akiva Defendants, but rather to 1 Oak and Up & Down. One key element for an account stated claim is “the existence of some indebtedness between the parties or an express agreement to treat the statement in question as an account stated.” *Martin H. Bauman Assoc., Inc. v. H & M Int’l Transport, Inc.*, 171 A.D.2d 479, 485 [1st Dept. 1991]. Plaintiff has failed to identify or allege facts that show an indebtedness between them and the Akiva Defendants. Therefore, there can be no account stated claim against the Akiva Defendants for invoices sent to other entities that were not paid.

Ultimately, it is the lack of a meritorious claim pled against the Akiva Defendants that requires dismissal of the complaint. Even if, as is the case here, a proffered reasonable excuse is not considered compelling, a court can still decline to dismiss the complaint pursuant to CPLR 3215 when there is a demonstration of a meritorious cause of action and a lack of prejudice.

LaValle v. Astoria Constr. & Paving Corp., 697 N.Y.S.2d 605, 606 [1st Dept. 1999]. But the problem with this argument is the fact that, for the reasons explored above, Plaintiff has not stated a meritorious claim. Therefore, dismissal of the complaint is proper. Accordingly, it is hereby

ADJUDGED that the motion is denied; and it is further ORDERED that the complaint is dismissed.

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LYLE E. FRANK, J.S.C.

9/19/2025
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE