

**Consolidated Elec. Meter Co. Inc. v
Powell Cos., LLC**

2025 NY Slip Op 33710(U)

September 24, 2025

Supreme Court, New York County

Docket Number: Index No. 650559/2025

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

-----X

INDEX NO. 650559/2025

CONSOLIDATED ELECTRIC METER CO. INC.

MOTION DATE 05/09/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

THE POWELL COMPANIES, LLC,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17

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

APPEARANCES:

Schaeffer & Associates LLP (Elliot Lawrence Scaeffler, Esq.)
for plaintiff.

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

In this breach of contract and account stated action,
plaintiff CONSOLIDATED ELECTRIC METER CO. INC. moves, by notice
of motion (seq. no. 001), pursuant to CPLR § 3215, for entry of
a default judgment against defendant THE POWELL COMPANIES, LLC.
Defendant does not appear or submit opposition to the motion.

For the reasons explained below, the motion is dismissed,
without prejudice.

BACKGROUND

Defendant THE POWELL COMPANIES, LLC (defendant) and non-party landlord 450 Seventh Avenue Associate, LLC entered into a six-month lease agreement for Room 2100 located at 450 Seventh Avenue, 21st Floor, New York, NY 10123 (premises) (see New York State Courts Electronic Filing System [NYSCEF] Doc. No. 02, Lease, dated June 01, 2023). Plaintiff CONSOLIDATED ELECTRIC METER CO. INC. (plaintiff) alleges that, according to the lease, defendant agreed to purchase electricity from plaintiff, who supplies electricity to the premises (see NYSCEF Doc. No. 01, Complaint; see also NYSCEF Doc. No. 03, Electricity Clause of Lease [pages 16-18 of the Lease, the full version of which has not been provided]). The lease further provides that:

"The Meter Company shall have the right, in the event of any non-payment by the Tenant of such bill within thirty (30) days after rendition, which failure continues for five (5) days after notice to Tenant thereof, to discontinue and cut off the use of electric current to the Tenant without further notice and without releasing the Tenant from any liability under the Lease, and without the Landlord or said Meter Company incurring any liability for any damage caused by such discontinuance of service"

(NYSCEF Doc. No. 03, Electricity Clause of Lease, at ¶ 14).

As such, plaintiff provided electricity to defendant, billed for the electric charges incurred by defendant, and sent

invoices to defendant for the amounts due and owing (see NYSCEF Doc. No. 01, Complaint; see also NYSCEF Doc. No. 03, Exhibit B, Electricity Clause of Lease).

According to plaintiff, defendant paid the monthly electric bills without incident until February of 2024 (see NYSCEF Doc. No. 01, Complaint]). In or around May of 2024, defendant began making only partial payments toward the monthly electric bills, and soon thereafter, had ceased paying the monthly electric bills entirely (see NYSCEF Doc. No. 05, Electric Bill [indicating total amount due of \$12,942.84 for charges incurred from May of 2024 through January of 2025]).

On January 13, 2025, plaintiff sent a final notice to defendant, demanding payment in-full of the past due electric service balance within five days, noting that partial payments "will not [be] accept[ed]" (NYSCEF Doc. No. 07, Demand Letter, dated January 13, 2025). Defendant failed to make said payment.

On January 31, 2025, plaintiff commenced this action to recover \$12,942.84 in unpaid electric charges incurred by defendant at the premises, as well as \$4,000.00 in an unpaid security deposit (see NYSCEF Doc. No. 01, Complaint). The complaint alleges causes of action sounding in breach of contract and account stated (see id.). Plaintiff further seeks a declaration that "the terms of the Lease are binding upon plaintiff and defendant, and plaintiff is authorized to cease

supplying electric current to the premises" (id.). Defendant has not appeared, answered, or otherwise moved against the complaint.

Now, plaintiff moves, by notice of motion (seq. no. 001), pursuant to CPLR § 3215, for an order granting it a default judgment against defendant. Defendant does not appear or file opposition.

ANALYSIS

CPLR § 3215 (a) authorizes the Court to grant a default judgment where a defendant "fails to appear, plead or proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed." To obtain such relief, the moving party must establish three elements: (1) proof of service of the summons and complaint upon the defendant, typically by affidavit of service executed by the process server; (2) proof of the facts constituting the claim, by way of an affidavit from a party with personal knowledge or verified complaint; and (3) proof of the default and the amount due, which may be established through an attorney's affirmation (see CPLR § 3215 [f]).

Where, as here, defendant is a limited liability company, proof of service on the limited liability company shall include

an affidavit of service, providing for, among other things, service of process on the secretary of state as an agent of the corporation or limited liability company.¹

Similarly, where a default judgment is sought, as here, against a limited liability company, the proponent must also submit proof that -- either simultaneous with service or after such service -- they executed "additional service of the summons [on the corporation or limited liability company] by first class mail" at the limited liability company's "last known address" (CPLR § 3215 [g] [4] [emphasis added]; see Momentum Telecom, Inc. v Velocity Wireless, LLC, 2024 WL 844824 [Sup Ct, NY Cnty 2024] [L. Nock, J.S.C.] [holding that "the court adheres to its prior decision denying the motion for a default judgment for failure to comply with the additional notice provisions of CPLR § 3215 [g] [4]" because "the additional notice requirements for corporations served through the Secretary of State [BCL 306]

¹ Section 303 of the Limited Liability Company Law provides, as relevant here: "(a) Service of process on the secretary of state as agent of a domestic limited liability company or authorized foreign limited liability company shall be made in the manner provided by paragraph one or two of this subdivision. . . . (1) Personally delivering to and leaving with the secretary of state or his or her deputy, or with any person authorized by the secretary of state to receive such service, at the office of the department of state in the city of Albany, duplicate copies of such process together with the statutory fee, which fee shall be a taxable disbursement. Service of process on such limited liability company shall be complete when the secretary of state is so served. The secretary of state shall promptly send one of such copies by certified mail, return receipt requested, to such limited liability company at the post office address on file in the department of state specified for that purpose. . . ."

apply with equal force to limited liability companies"], citing Crespo v A.D.A. Mgt., 292 AD2d 5, 10 [1st Dept 2002]).

Here, plaintiff submits proof that on February 14, 2025, plaintiff served the summons and complaint upon defendant pursuant to Limited Liability Company Law § 303 (see NYSCEF Doc. No. 11, Affidavit of Service [providing that service of process was effectuated upon the Secretary of State by personally delivering two copies of the summons and complaint]). However, plaintiff does not submit any proof that it complied with the additional notice requirements of CPLR § 3215 [g] [4].

Notwithstanding this defect, CPLR § 3215 (f) also requires an affidavit by a person with knowledge setting forth "proof of the facts constituting the claim", or a verified complaint. "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]; see also Feffer v Malpeso, 210 AD2d 60, 61 [1st Dept 1994] [providing that 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]). And, "if [the] factual allegations do not state a valid cause of action, the party moving for a

default judgment is not entitled to the requested relief, even on default" (Nationstar Mortgage, LLC v Hilpertshauser, 156 AD3d 1052, 1053 [3d Dept 2017]).

Here, plaintiff submits the affidavit of Howard Seiler, President of plaintiff, who attests to having "personal knowledge" of the facts (NYSCEF Doc. No. 09, Affidavit of Howard Seiler, President of plaintiff). However, there is no indication that Howard Seiler has independent, first-hand personal knowledge of plaintiff's mailing practices in order to establish that plaintiff mailed the monthly electric bills to defendant, or that defendant received such invoices (see 23rd St. Berk, LLC v Journey Flatiron LLC, 2024 NY Slip Op 51276 [U], **2 [Sup Ct NY Cnty] [G. Lebovits, J.S.C.] [holding that "a party suing on an account stated 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"], citing Morrison Cohen Singer & Weinstein, LLP v Brophy, 19 AD3d 161, 161-162 [1st Dept 2005]).

There is also no indication that Howard Seiler has independent, first-hand personal knowledge of whether defendant made partial payment on the monthly electric bills, or the amounts paid (see Garr Siple, P.C. v Weir, 208 AD3d 1098, 1099 [1st Dept 2022] [holding that plaintiff submitted proof that defendant made partial payments on the account, supporting its

claim for account stated]; see also Jordache Enterprises Inc. v Menaged, 2011 NY Slip Op 32020[U] [Sup Ct NY Cnty 2011] [granting plaintiff's motion for a default judgment on its cause of action for account stated where plaintiff provided the affidavit of "Eddie Ben Aderet, Executive Vice President of Plaintiff [who] states that [] defendant issued a payment of \$10,000.00 on April 7, 2008, and a payment of \$10,000.00 on August 5, 2008 to plaintiff, but defendant failed to make any further payments]).

Further, neither the factual allegations in the complaint nor the documentation submitted support a cause of action for breach of contract or for a declaratory judgment -- the lease, to which plaintiff is not a party² expired on November 30, 2023, and the arrears began to accrue in May of 2024 (see NYSCEF Doc. No. 02, Lease [providing term as commencing on May 31, 2023 and expiring on November 30, 2023], and NYSCEF Doc. No. 01, Complaint; see also Second Source Funding, LLC v Yellowstone Capital, LLC, 144 AD3d 445, 446 [1st Dept 2016] [recovery under breach of contract requires a plaintiff to demonstrate the existence of a contract, the plaintiff's performance thereunder, the defendant's breach of that contract, and resulting damages] [emphasis added]). Therefore, plaintiff is not entitled

² Though not dispositive here, "in order to have standing to challenge a contract, a nonparty to the contract must either suffer direct harm flowing from the contract or be a third-party beneficiary thereof" (FGP 1, LLC v Dubrovsky, 197 AD3d 441, 441-442 [1st Dept 2021], quoting Decolator, Cohen & DiPrisco v Lysaght, Lysaght & Kramer, 304 AD2d 86, 90 [1st Dept 2003]).

to a declaratory judgment that the lease is binding upon plaintiff and defendant, or to damages on its breach of contract cause of action.

Accordingly, it is hereby

ORDERED that plaintiff's motion (seq. no. 001), pursuant to CPLR § 3215, for a default judgment, is dismissed without prejudice; it is further

ORDERED that plaintiff shall serve a copy of this order, with notice of entry, upon defendant; it is further

ORDERED that plaintiff shall bring a renewed default judgment motion on its account stated cause of action, supported by appropriate documentation, within 90 days; and it is further

ORDERED that the Clerk of Court shall mark the file accordingly.

9/24/2025
DATE


EMILY MORALES-MINERVA, J.S.C.

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