

Hillebrand Gori USA LLC v Wolff & Troy, LLC

2025 NY Slip Op 34741(U)

December 9, 2025

Supreme Court, New York County

Docket Number: Index No. 654978/2024

Judge: Emily Morales-Minerva

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 42M

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HILLEBRAND GORI USA LLC

Plaintiff,

- v -

WOLFF & TROY, LLC, D/B/A INDIE WINERIES,

Defendant.

INDEX NO. 654978/2024

MOTION DATE 07/15/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11
were read on this motion to/for JUDGMENT - DEFAULT

APPEARANCES:

Carlos M. Carvajal, Esq., New York, NY (Carlos Mario Carvajal, Esq., of counsel), for plaintiff.

EMILY MORALES-MINERVA, J.S.C.

In this action sounding in breach of contract and account stated, plaintiff HILLEBRAND GORI USA LLC moves, by notice of motion (seq. no. 01), pursuant to CPLR § 3215, for a default judgment against defendant WOLFF & TROY D/B/A INDIE WINERIES. Defendant does not appear or submit opposition to the motion.

Now, upon review of the application and supporting materials, the Court denies the motion entirely.

When 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, the

plaintiff may seek a default judgment against [the defendant]" (CPLR § 3215 [a]). Generally, the proponent of a default judgment must provide proof of (1) service of the summons and complaint, of (2) the facts constituting the claim, and of (3) the default and the amount due (see CPLR § 3215 [f]; see also Woodson v Mendon Leasing Corp., 100 NY2d 62, 70 [2003]; Gordon Law Firm, P.C. v Premier DNA Corp., 205 AD3d 416 [1st Dept 2022])).

Proof of service on a limited liability company shall include an affidavit of service, pursuant to Limited Liability Company Law § 303, providing for, among other things, service of process on the secretary of state as an agent of the 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

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. . . ."

such service -- they executed "additional service of the summons [on the limited liability company] by first class mail" at the limited liability company's "last known address" (CPLR § 3215 [g] [4] [i] [emphasis added]).

While plaintiff appropriately served defendant by effectuating service upon the secretary of state (NYSCEF Doc. No. 03, affidavit of service), plaintiff provides insufficient proof of compliance with the additional mailing requirement of CPLR § 3215 (g) (4) (ii). The affidavit of additional mailing provides that the summons and complaint were mailed to defendant at "222 Broadway, 19th Floor, New York, NY 10038" (NYSCEF Doc. No. 07, affidavit of additional mailing). However, the deponent does not attest to having mailed the summons and complaint to defendant's "last known address" (id.). In any event, a conclusory statement of a limited liability company's "last known address" would be insufficient absent language substantiating the source of that knowledge.

Further, "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]).

To prevail on its breach of contract claim, plaintiff must establish that (1) a contract exists between the parties; that (2) plaintiff performed in accordance with the contract; that (3) defendant breached its contractual obligations; and that (4) defendant's breach resulted in damages (see generally 34-06 73, LLC v Seneca Ins. Co., 39 NY3d 44, 51 [2022] [discussing the standard for a breach of contract in the context of a pleading]). This standard requires the plaintiff to demonstrate "the essential terms of the parties' purported contract, including the specific provisions of the contract upon which liability is predicated" (Hempel v Wise, 224 AD3d 574, 575 [1st Dept 2024], quoting Matter of Sud v Sud, 211 AD2d 423, 424 [1st Dept 1995]; see also Harman Becker Auto. Sys., Inc. v Avnet, Inc., 237 AD3d 539, 541 [1st Dept 2025]).

Plaintiff's submissions fall short of such prima facie validity. It's complaint merely alleges in a conclusory fashion that "prior to July 2020, defendant entered into an agreement with plaintiff for plaintiff to provides the Services to Defendant in exchange for an agreed-upon payment" (NYSCEF Doc.

No. 01, complaint; see also NYSCEF Doc. No. 005, affidavit of merit [repeating same conclusory allegations and failing to submit the alleged "agreement" to the Court]). Further, plaintiff submits no contract between plaintiff and defendant, and submits no supporting facts from which the court could determine the terms of a contract, if any.

Without specific facts as to a contract or contract terms, the court has no basis upon which to gauge if plaintiff performed its part of the bargain, if defendant breached the contract, and if plaintiff sustained damages as a result.

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, 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, 83 Misc3d 1293 [A] [Sup Ct NY Cnty 2024] [G. Lebovits, J.S.C.], citing Morrison Cohen Singer & Weinstein, LLP v Brophy, 19 AD3d 161, 161-162 [1st Dept 2005]; LD Exch., Inc. v Orion Telcoms. Corp., 302 AD2d 565 [2d Dept 2003]).

Plaintiff has not provided satisfactory prima facie proof of these elements. Though plaintiff submits copies of the invoices (NYSCEF Doc. No. 09) and relies on the affirmation of Philip McKenna (McKenna), Head of USA Billing and Collections for plaintiff (NYSCEF Doc. No. 08), the affidavit is silent as to how the invoices were sent, and does not provide evidence of transmission or receipt (see 23rd St. Berk, LLC, 83 Misc3d at *2). Similarly, McKenna does not attest to whether defendant made partial payment on the invoices, nor does McKenna provide the amounts -- if any -- defendant 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]).

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 within 90 days; and it is further

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

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

12/9/2025
DATE


EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: