

Turco Golf, Inc. v Perdek
2025 NY Slip Op 35350(U)
January 27, 2025
Supreme Court, Rockland County
Docket Number: Index No. 035878/2024
Judge: Keith J. Cornell
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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TURCO GOLF, INC., :
Plaintiff, :
-against- :
DARIUS PERDEK, :
Defendants. :
----- X

DECISION & ORDER

Index No.: 035878/2024

(Motion Seq. # 1)

Hon. Keith J. Cornell, A.J.S.C.

Before the Court is the Plaintiff’s motion for default judgment pursuant to CPLR 3215. The Defendant has not answered the complaint or opposed this motion.

The following documents have been read and considered: NYSCEF Doc. Nos. 1-12.

Plaintiff commenced the instant action by filing a Summons and Complaint with the Rockland County Clerk's office on September 24, 2024 (NYSCEF #1) and Plaintiff had Defendant personally served on September 26, 2024 at 9:40 am (Affidavit of Service, NYSCEF #2) at his residence at 20 Carpenter Terrace #C, North Bellville, New Jersey. Defendant has not answered the complaint (Getler, Esq. Affirmation, NYSCEF #11).

Plaintiff, Turco Golf, Inc., is a general contractor to a construction contract dated December 1, 2021 (the "Prime Contract"), for the development of real property located in Rockland County (the "Site"), owned by State Street Properties, LLC. Defendant, Darius Perdek, is an individual with a personal residence located at 20 Carpenter Terrace, North Belleville, New Jersey 07109.

This action stems from a breach of subcontract to recoup overpayment thereunder. Plaintiff and State Street Properties, LLC, (as "Owner") of real property situated in Rockland County, entered into a contract to develop the Owner's property (the "Prime Contract"). (Affidavit of

Lawrence P. Turco, NYSCEF #5 ("Turco Affidavit") at paragraph 2). Under the Prime Contract, Plaintiff agreed to construct a warehouse on the Owner's property (the "Project"). On or about May 9, 2024, Plaintiff and Defendant, Darius Perdek, entered into the subject subcontract (the "Subcontract") (NYSCEF #6).

The Subcontract provided a scope of work that obligated Defendant to provide "[l]abor for installation of 3 sets of stairs & platforms" the "fabrication of base plates & angle clips...fabricat[ion] and install[l]ation of] I-beams s & columns, installing 18 gauge steel decking, welding sheer studs...stairs & railings" and also supply the "welding machines & a sheer stud welding machine gun" required for the Project. On or about May 7, 2024, Defendant provided Plaintiff with invoices related to sourcing of materials for the Project (the "First Invoice", NYSCEF #7).

On May 8, 2024, Plaintiff drafted and tendered a check to Defendant in the sum of Seven Thousand Seven Hundred Seventy-One and 00/100 Dollars (\$7,771.00), in payment of the First Invoice (the "First Overpayment", NYSCEF#8). On May 9, 2024, Defendant endorsed and deposited the First Overpayment check.

On May 9, 2024, Plaintiff received a second invoice ("Second Invoice") and the amount of \$10,000, which the Plaintiff paid on June 3, 2024 ("Second Overpayment", NYSCEF #10), which Defendant endorsed and deposited.

The Defendant failed to perform any of the associated labor or supply any of the materials required in the Subcontract and associated with the Plaintiff's two payments.

Plaintiff demanded reimbursement from the Defendant. The Defendant failed to reimburse the Plaintiff in the total amount of \$17,771.00. According to the Plaintiff, Plaintiff received nothing in return for these payments made to the Defendant. (Turco Affidavit, para 13-17).

CPLR 3215 (f) establishes the proof required before a party may be entitled to a judgment of default. First, a plaintiff must show that the defendant was duly served with the summons and complaint or a summons with notice, which is typically done by submitting an affidavit of service from the process server. Second, the plaintiff must show that the defendant has failed to appear or answer, which is typically done with an attorney affirmation. Third, the plaintiff must provide an affidavit by a person with knowledge setting forth “proof of the facts constituting the claim”. (CPLR 3215(f)).

Here, Plaintiff has provided proof of all three of the required elements: proof of service (NYSCEF #2), the failure to appear or answer (NYSCEF #11) and, the facts constituting the claim by an affidavit of a person with knowledge (NYSCEF #5), Therefore, the Plaintiff has established its entitlement to requested judgment of default.

Based upon the foregoing, it is

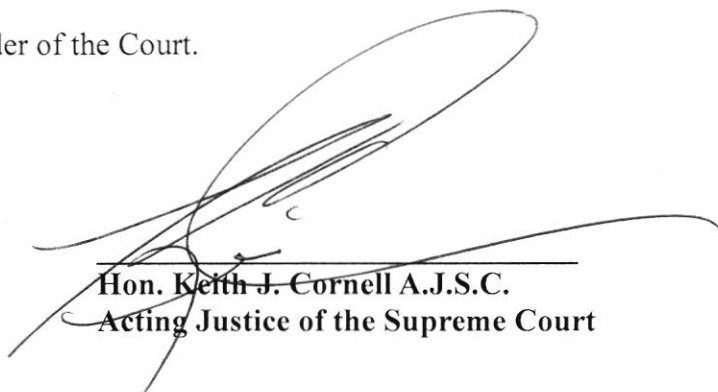
ORDERED, that Plaintiff’s motion for a default judgment is GRANTED; and it is further

ORDERED, that the damages attributable to the defaulting defendant is the sum of \$17,771.00; and it is further

ORDERED, that the Clerk is hereby directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

Dated: New City, New York
January 27, 2025



Hon. Keith J. Cornell A.J.S.C.
Acting Justice of the Supreme Court

TO: Plaintiff via NYSCEF
Defendant via USPS