

Endico v Parker

2025 NY Slip Op 35381(U)

January 24, 2025

Supreme Court, Westchester County

Docket Number: Index No. 70997/2024

Judge: David S. Zuckerman

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

Motion Sequence No. 1
To commence the statutory time
for appeals as of right (CPLR 5513 [a]),
you are advised to serve a copy of this
order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
FELIX ENDICO,

DECISION AND ORDER

Plaintiff,

**INDEX NO. :
70997/2024**

-against-

MARVIN PARKER,

Defendant.

-----X
ZUCKERMAN, J.

In this breach of contract action, the papers denominated Documents 1 through 9 in NYSCEF were considered in connection with this motion by Plaintiff, pursuant to CPLR 3215(a), for an Order granting a default judgment. There is no opposition to the motion.

BACKGROUND

On September 27, 2024, Plaintiff commenced the action by filing a Summons and Complaint. The Complaint contains causes of action for breach of contract, negligence, and conversion.

As set forth in the Complaint, Plaintiff retained Defendant

to refurbish the interior of a 1978 Rolls Royce Silver Wreath 2 motor vehicle. Pursuant to their agreement, Plaintiff paid Defendant \$7,500.00 for the work. Plaintiff alleges that Defendant failed to complete the work, caused "the destruction of Plaintiff's Rolls Royce" (Complaint, p. 2), and refuses to return the \$7,500.00 and the vehicle.

Plaintiff seeks:

"1) On the first cause of action against Defendant PARKER in the sum of \$7,500.00.

2) On second cause of action against Defendant PARKER in the sum of \$35,000.00.

3) On the third cause of action for return of the vehicle in the same condition as delivered or for the sum of \$35,000.00.

4) Together with costs and disbursements of this action"

(Complaint, p. 3).

According to the Affidavit of Service, on October 2, 2024, Defendant was served by personal delivery. Defendant has defaulted in timely answering, moving, or appearing.

CPLR §3215(a) provides, in pertinent part, that "[w]hen a defendant has failed to appear, plead or proceed to trial... the plaintiff may seek a default judgment ..." "On a motion for leave

to enter a default judgment pursuant to CPLR §3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party's default in answering or appearing" (*Atlantic Cas. Ins. Co. v RJNJ Servs. Inc.*, 89 AD3d 649, 651 [2d Dept 2011]). "The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts" (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). "[D]efaulters are 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]). Nevertheless, "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" (*Guzetti v City of New York*, 32 AD3d 234, 235 [1st Dept 2006]) (internal quotations and citations omitted).

"The affidavit of a process server constitutes prima facie evidence of proper service" (*Federal Natl. Mtge. Assn. v Britt*, 205 AD3d 683 [2d Dept 2022]). Here, the Affidavit of Service establishes service of the Summons and Complaint. Notably, Defendant does not contest proper service.

To establish a claim for breach of contract, Plaintiff must demonstrate with evidence in admissible form "the existence of a contract, the plaintiff's performance pursuant to the contract, the defendant's breach of his or her contractual obligations, and damages resulting from the breach" (*Dee v Rakower*, 112 AD3d 204, 208-09 [2d Dept 2013]). "It is well established that in actions for breach of contract the nonbreaching party may recover general damages which are the natural and probable consequence of the breach" (*Kenford Co., Inc. v County of Erie*, 73 NY2d 312, 319 [1989]). The basic principle of damages in a contract action is to leave the injured party in as good a position as he or she would have been if the contract had been fully performed (*Brushton-Moira Cent. School Dist. v Fred H. Thomas Associates, P.C.*, 91 NY2d 256, [1998]). "To establish a prima facie case of negligence, a plaintiff must demonstrate (1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom" (*Solomon by Solomon v City of New York*, 66 NY2d 1026, 1027 [1985]). "In order to succeed on a cause of action to recover damages for conversion, a plaintiff must show (1) legal ownership or an immediate right of possession to a specific identifiable thing and (2) that the defendant exercised an unauthorized dominion over the thing in question to the exclusion of the plaintiff's right" (*Giardini v Settanni*, 159 AD3d 874, 875 [2d Dept 2018]).

Here, in support of the motion, Plaintiff submits, *inter alia*, the Verified Complaint, Plaintiff's Affidavit and counsel's Affirmation. These documents establish, *prima facie*, Plaintiff's claims and Defendant's default. The burden then shifts to Defendant to demonstrate a reasonable excuse for the delay and the existence of a meritorious defense (*US Bank Nat. Ass'n v Louis*, 148 AD3d 758 [2d Dept 2017]). Defendant has not submitted any evidence in that regard. Therefore, Plaintiff's unopposed motion for a default judgment must be granted. The court notes that Plaintiffs, in their counsel's Affirmation in Support, specifically request that the court set the matter down for an inquest.

Accordingly, upon the foregoing papers, it is hereby

ORDERED that Plaintiff is granted a default judgment; and it is further

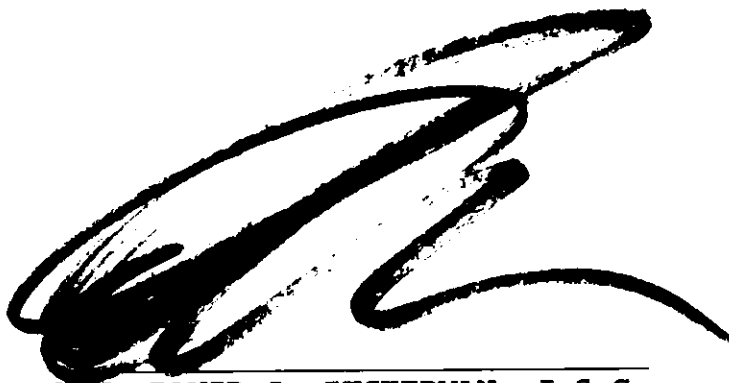
ORDERED that Plaintiff shall cause an Inquest Note of Issue to be filed within 20 days of this Decision and Order; and it is further

ORDERED that Plaintiff shall serve Defendant by enclosing a copy of this Decision and Order in an envelope bearing Defendant's

name and last known address as well as the service address set forth in the Affidavit of Service, if different, sending each by first class mail and thereafter filing proof with the court.

The foregoing constitutes the Opinion, Decision & Order of the Court.

Dated: White Plains, New York
January 24, 2025

A large, bold, handwritten signature in black ink, appearing to read 'D. S. Zuckerman', is written over a horizontal line.

HON. DAVID S. ZUCKERMAN, J.S.C.

TO: All parties via NYSCEF