

Smith v N. Lebron Pools LLC
2025 NY Slip Op 35405(U)
March 3, 2025
Supreme Court, Westchester County
Docket Number: Index No. 58159/2024
Judge: David S. Zuckerman
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Motion Sequence No. 2
 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
 CARDINALE B. SMITH and RYAN DOUGAL,

DECISION AND ORDER

Plaintiff,

**INDEX NO.:
 58159/2024**

-against-

N. LEBRON POOLS LLC and MITCH LEBRON,

Defendants.

-----X
 N. LEBRON POOLS LLC and MITCH LEBRON,

Third-Party Plaintiffs,

-against-

OSCAR SANDOVAL,

Third-Party Defendant.

-----X

ZUCKERMAN, J.

In this breach of contract action, the papers denominated Documents 1 through 70 in NYSCEF were considered in connection with this motion by Third-Party Plaintiff, pursuant to CPLR 3215(a), for an Order granting a default judgment. There is no opposition to the motion.

BACKGROUND

On March 6, 2024, Plaintiff commenced the action by filing a Summons and Complaint. On December 3, 2024, Defendants/Third-Party Plaintiffs filed a Third-Party Complaint. It contains causes of action for common law indemnification and contribution,

According to the Affidavit of Service, on December 13, 2024, Third-Party Defendant was served by delivering the commencing papers to the Connecticut Secretary of State. Third-Party 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, Third-Party Defendant does not contest proper service.

"In order to establish a claim for common-law indemnification, a party must 'prove not only that [it was] not negligent, but also that the proposed indemnitor ... was responsible for negligence that contributed to the accident or, in the absence of any negligence, had the authority to direct, supervise, and control the work giving rise to the injury'" (*Hart v Commack Hotel, LLC*, 85 AD3d 1117, 1118-19 [2d Dept 2011] quoting *Benedetto v. Carrera Realty Corp.*, 32 AD3d 874 [2d Dept 2006])). "Since the predicate of common-law indemnity is vicarious

liability without actual fault on the part of the proposed indemnitee, it follows that a party who has itself actually participated to some degree in the wrongdoing cannot receive the benefit of the doctrine" (*Trustees of Columbia Univ. in City of N.Y. v Mitchell/Giurgola Assocs.*, 109 AD2d 449, 453 [1st Dept 1985])). To state a cause of action for contribution, the claimant must allege that the party sued owed a duty of reasonable care independent of its contractual obligations (*Wheaton v East End Commons Assoc., LLC*, 50 AD3d 675 [2d Dept 2008])).

Here, in support of the motion, Defendants/Third-Party Plaintiffs submit, *inter alia*, the Verified Third-Party Complaint. This document establishes, *prima facie*, Defendants/Third-Party Plaintiffs' claims and Third-Party Defendant's default (CPLR 105(u); see *Sanchez v Nat'l R.R. Passenger Corp.*, 21 NY3d 890 [2013])). The burden then shifts to Third-Party 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])). Third-Party Defendant has not submitted any evidence in that regard. Therefore, Defendants/Third-Party Plaintiffs' unopposed motion for a default judgment must be granted. The court notes that Third-Party Plaintiffs, in their counsel's Affirmation in Support, specifically request that the

court schedule an inquest "at the close of the underlying action"
(Affirmation in Support, p. 6).

Accordingly, upon the foregoing papers, it is hereby

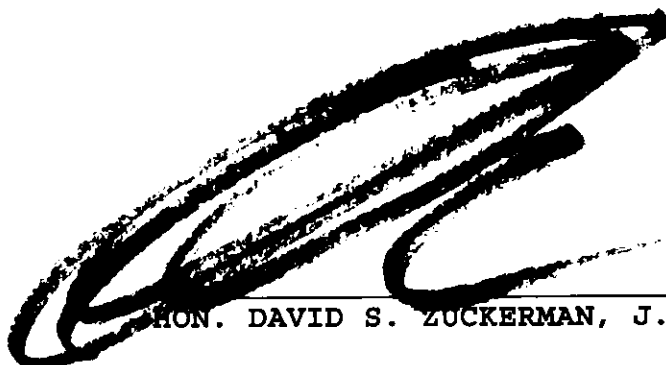
ORDERED that Defendants/Third-Party Plaintiffs N. Lebron Pools, LLC and Mitch Lebron are granted a default judgment against Third-Party Defendant Oscar Sandoval; and it is further

ORDERED that Defendants/Third-Party Plaintiffs shall cause an Inquest Note of Issue to be filed within 20 days of this Decision and Order; and it is further

ORDERED that Defendants/Third-Party Plaintiffs shall serve Third-Party Defendant by enclosing a copy of this Decision and Order in an envelope bearing Third-Party Defendant's name and last known address and sending it by first class mail as well as serving the Connecticut Secretary of State and thereafter filing proof with the court.

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

Dated: White Plains, New York
March 3, 2025

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

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

TO: All parties via NYSCEF