

JPMorgan Chase Bank, N.A. v O.H. & M. Elec. Corp.
2025 NY Slip Op 35522(U)
March 14, 2025
Supreme Court, Nassau County
Docket Number: Index No. 605662/2024
Judge: Sarika Kapoor
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**SUPREME COURT: STATE OF NEW YORK
COUNTY OF NASSAU**

PRESENT: HON. SARIKA KAPOOR
ACTING JUSTICE OF THE SUPREME COURT

-----X
JPMORGAN CHASE BANK, N.A.,

TRIAL/IAS PART 32
Index No.: 605662/2024

Plaintiff,

DECISION AND ORDER

- against -

Motion Seq. No.: 001
Motion Submission Date:
11/01/2024

O.H. & M. ELECTRICAL CORP.
and JOSEPH G. LYNCH,

Defendants.
-----X

NYSCEF document numbers 4 through 22 were considered in deciding this motion.

Relief Requested

Plaintiff moves (1) pursuant to CPLR 3215 for leave to enter a default judgment against defendant O.H. & M Electrical Corp. ("corporate defendant") (2) for summary judgment on the complaint insofar as asserted against defendant Joseph G. Lynch ("Lynch") and for summary judgment dismissing Lynch's affirmative defense, and (3) "an order severing Plaintiff's third cause of action for attorney's fees for other determination and/or for inquest upon the filing of a note of issue."

Background

Plaintiff and the corporate defendant allegedly entered into a contract on or about July 20, 2022. According to the contract, Lynch executed a personal guaranty of performance of all the obligations of the corporate defendant set forth in the contract. On or about February 2, 2024, defendants allegedly defaulted by failing to comply with the terms of the contract.

On April 2, 2024, Plaintiff commenced this action against the corporate defendant and Lynch, alleging three causes of action. The first cause of action alleges breach of contract against the corporate defendant. The second cause of action alleges breach of the personal guaranty against Lynch. The third cause of action alleges that, "[p]ursuant to the terms of the Contract and Guaranty agreement, the defendants . . . agreed to pay all costs of collection incurred by [Plaintiff], including

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reasonable attorneys' fees, in the event an attorney was retained to enforce or collect said Contract. [Plaintiff] has incurred and continues to incur expenses, including attorneys' fees, which cannot be finally determined at this date, but which will be capable of determination at such time as judgment may be entered."

In Lynch's answer, he denied the material allegations of the complaint and asserted one affirmative defense, to wit, that the complaint fails to state a cause of action against him.

The corporate defendant has failed to answer or otherwise appear in this action.

Motion Sequence 001

By notice of motion filed August 5, 2024, Plaintiff moves (1) pursuant to CPLR 3215 for leave to enter a default judgment against the corporate defendant (2) for summary judgment on the complaint insofar as asserted against defendant Lynch and for summary judgment dismissing Lynch's affirmative defense, and (3) "for an order severing Plaintiff's third cause of action for attorney's fees for other determination and/or for inquest upon the filing of a note of issue."

On the first and second causes of action, Plaintiff seeks a judgment against the defendants, jointly and severally, in the amount of "\$213,478.74, plus additional interest from and after July 9, 2024 on the principal balance of \$197,230.78 at the rate of 1.4% per annum above the Prime Rate, which equals a current per diem rate of \$53.35, and for an order severing Plaintiff's third cause of action for attorneys' fees for other determination and/or for inquest upon the filing of a note of issue" (NYSCEF doc. 11).

Neither defendant has submitted opposition papers.

Default Judgment

Plaintiff moves pursuant to CPLR 3215 for leave to enter a default judgment against the corporate defendant. In an attorney affirmation in support of the motion, counsel for Plaintiff asserts that the corporate defendant was properly served and is now in default.

Attached as an exhibit to the attorney affirmation in support of the motion is an affidavit of service for the defendants. The affidavit of service indicates that service of the corporate defendant was effectuated upon the Secretary of State pursuant to Business Corporation Law § 306. Counsel also attached a notice of service pursuant to CPLR 3215(g).

The corporate defendant has not submitted opposition to the motion.

On a motion for leave to enter a default judgment pursuant to CPLR 3215(f), a movant is required to file proof of: (1) service of a copy or copies of the summons and the complaint, (2) the facts constituting the claim, and (3) the defendant's default.

Here, Plaintiff satisfied its burden by submitting proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the corporate defendant's default in answering or appearing despite being properly served in accordance with Business Corporation Law § 306(b) and CPLR 3215(g). Specifically, Plaintiff demonstrated the existence of a contract, Plaintiff's performance pursuant to the contract, the corporate defendant's breach

of its contractual obligations, and damages sustained by Plaintiff because of that breach (*see generally Dee v Rakower*, 112 AD3d 204, 208-209 [2d Dept 2013]).

Therefore, Plaintiff has established its entitlement to the relief sought in the branch of its motion which seeks leave to enter a default judgment.

Summary Judgment

Plaintiff moves for summary judgment on the complaint insofar as asserted against Lynch and for summary judgment dismissing Lynch's affirmative defense. In support of the instant motion, Plaintiff submits, inter alia, an attorney affirmation, a memorandum of law, an affidavit of facts from an Associate employed by Plaintiff, Jody Wilkens ("Wilkens") and exhibits, including the underlying contract, the underlying guaranty, and transaction history.

Wilkens attests that the corporate defendant entered into a Line of Credit Note with Plaintiff in the amount of \$200,000 and a credit agreement; Lynch entered a guaranty (*see* NYSCEF docs. 13 and 14). Wilkens further attests that the corporate defendant has failed to pay under the terms of the contract and Lynch has failed to cure the default as outlined in the guaranty, and as a result Lynch is in default (*see* NYSCEF doc. 15 stating "the Guarantor absolutely and unconditionally guarantees to the Bank the performance of a full and prompt payment of the Liabilities when due").

Counsel for Plaintiff contends that Lynch's answer and affirmative defense provide general denials of the allegations in the complaint and provide no defense to the allegations against him, such as proof of payment, or allegations of forgery of the contract.

Summary judgment is a drastic remedy only to be granted when the movant proves that there are no issues of fact to be tried (*see Vega v Restani Const. Corp.*, 18 NY3d 499, 504 [2012]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). "On a motion for summary judgment to enforce a written guaranty, all that the creditor need to prove is an absolute and unconditional guaranty, the underlying debt, and the guarantor's failure to perform under the guaranty" (*Capital One Taxi Medallion Fin. v JEB Mgt. Corp.*, 192 AD3d 1072, 1073 [2d Dept 2021] [internal quotation marks omitted]). Here, Plaintiff established its prima facie entitlement to judgment as a matter of law through its submission of the credit agreement, the guaranty, and evidence that the defendants failed to make payments in accordance with the terms of those instruments (*id.*)

Accordingly, the burden shifts to Lynch to raise a triable issue of fact. As Lynch did not oppose this motion, he has failed to raise a triable issue of fact.

Plaintiff also established its prima facie entitlement to summary judgment dismissing Lynch's affirmative defense (*see Principis Capital, LLC v I Do., Inc.*, 201 AD3d 752, 754-755 [2d Dept 2022]).

Third Cause of Action

With respect to the third cause of action, Plaintiff has established its entitlement to a default judgment against the corporate defendant and summary judgment against Lynch. Severance, however, is not necessary. The request for an inquest is granted to the extent that the amount of

attorneys' fees will be determined on submissions to the Court from Plaintiff's counsel to be made within 14 days of this decision and order. After the Court determines the amount of attorneys fees to be awarded, Plaintiff will be directed to submit judgment on notice, which judgment shall include the amount to be awarded on all three causes of action.

Conclusion

Based on the foregoing, it is hereby,

ORDERED that Plaintiff's motion is **GRANTED** as to the first and second causes of action; and it is further,

ORDERED that Plaintiff's motion is **DENIED** as to the third cause of action; and it is further,

ORDERED that, within 14 days of this decision and order, Plaintiff's counsel shall submit to this Court an affidavit attesting to the reasonable costs and attorneys' fees incurred in this action, with substantiating proof.

All applications not specifically addressed herein are **DENIED**.

This shall constitute the Decision and Order of the Court.

Dated: March 14, 2025
Mineola, New York

ENTER:



HON. SARIKA KAPOOR, A.J.S.C.

ENTERED

Mar 14 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE