

B.C.D. Tech Inc. v 176 Pennington Owner LLC

2026 NY Slip Op 30404(U)

January 23, 2026

Supreme Court, New York County

Docket Number: Index No. 654697/2024

Judge: Emily Morales-Minerva

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This opinion is uncorrected and not selected for official publication.

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

-----X
B.C.D. TECH INC.,

Plaintiff,

- v -

176 PENNINGTON OWNER LLC, HAWK CONTRACTING
OF NY INC., ARTHUR PIEKARSKI

Defendants.

INDEX NO. 654697/2024

MOTION DATE 07/30/2025

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

-----X
The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 21,
22, 23

were read on this motion to/for JUDGMENT - DEFAULT.

APPEARANCES:

Zwicker & Associates, P.C., Rochester, NY (Michael John
Hoefs, Esq., of counsel), for plaintiff.

EMILY MORALES-MINERVA, J.S.C.

In this breach of contract action, plaintiff B.C.D. TECH
INC. moves, by notice of motion (sequence number 02), pursuant
to CPLR § 3215, for a default judgment against defendants HAWK
CONTRACTING OF NY INC. and ARTHUR PIEKARSKI.¹ Defendants do not
appear or submit opposition to the motion.

Now, upon review of the application and supporting materials,
the Court grants the motion (seq. no. 02), in part.

¹ Plaintiff discontinued this action against non-answering defendant 176
PENNINGTON OWNER LLC (see New York State Court Electronic Filing System
[NYSCEF] Doc. No. 18, affirmation in support noting discontinuance, dated
June 16, 2025).

BACKGROUND

Plaintiff B.C.D. TECH INC., a subcontractor, entered into an agreement with defendant HAWK CONTRACTING OF NY INC. (Hawk Contracting), a general contractor, to perform the installation of, among other things, gas furnaces at 176 Pennington Avenue, Passaic NJ 07055 (the premises) (see New York State Court Electronic Filing System [NYSCEF] Doc. No. 01, complaint). Pursuant to said agreement, plaintiff agreed to provide said installation services for the total sum of \$258,000.00 (see NYSCEF Doc. No. 10, agreement, dated February 11, 2022).

Plaintiff commenced its work at the premises, and Hawk Contracting made partial payments to plaintiff, totaling \$185,000.00 (see NYSCEF Doc. No. 11, copies of checks from Hawk Contracting to plaintiff). Despite plaintiff completing its work at the premises, Hawk Contracting failed to pay plaintiff the remaining balance of \$73,000.00 (see NYSCEF Doc. No. 05 affirmation of David Mei, President of plaintiff, in support of motion).

Thereafter, plaintiff commenced this action to recover from defendant Hawk Contracting, and its owner ARTHUR PIEKARSKI (Piekarski), jointly and severally, the outstanding balance of \$73,000.00 (see NYSCEF Doc. No. 01, complaint).

On February 26, 2025, plaintiff moved, by notice of motion (sequence number 01), pursuant to CPLR § 3215, for a default judgment against defendants. By decision and order dated May 08, 2025, the Court denied the motion (seq. no. 01) without prejudice due to, among other things, deficient service of process (see NYSCEF Doc. No. 15, decision and order, dated May 08, 2025). Plaintiff now renews its request and moves, by notice of motion (seq. no. 02), for a default judgment against defendants.

ANALYSIS

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]). To establish entitlement to a default judgment, plaintiff must file (1) proof it served defendant with the summons and complaint, and (2) “proof of the facts constituting the claim, the default, and the amount due . . . by affidavit made by the party” (CPLR § 3215 [f]; see also Woodson v Mendon Leasing Corp., 100 NY2d 62, 70 [2003] [providing that “an applicant for a default judgment [must] file ‘proof by affidavit made by the party of the facts constituting the

claim'"]; 231st Riverdale LLC v 7 Star Home Furniture Inc., 198 AD3d 524, 525 [1st Dept 2021]; Feffer v Malpeso, 210 AD2d 60 [1st Dept 1994]).

In matters of default, where "the defendant fail[s] to appear, and the plaintiff does not have the benefit of discovery, the affidavit or verified complaint need only allege enough facts to enable a court to determine that a viable cause of action exists" (Woodson, 100 NY2d at 70-71, citing 7 Weinstein-Korn Miller, NY Civ Prac ¶ 3215.24, at 32-326; see also B&H Flooring, LLC v Folger, 228 AD3d 809 [2d Dept 2024]). "Indeed, defaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them" (Woodson, 100 NY2d at 71, citing Rokina Opt. Co. v Camera King, 63 NY2d 728, 730 [1984]; see also Petty v Law Off. of Robert P. Santoriella, P.C., 200 AD3d 621, 621 [1st Dept 2021] [holding: "[B]y defaulting, a defendant admits all traversable allegations contained in the complaint, and thus concedes liability"]).

However, "'[s]ome proof of liability is . . . required to satisfy the court as to the prima facie validity of the uncontested cause of action,' but the standard of proof is 'minimal,' and 'not stringent'" (Petty, 200 AD3d at 621, quoting Joosten v Gale, 129 AD2d 531, 535 [1st Dept 1987]).

Here, plaintiff demonstrates its entitlement to entry of a default judgment against defendant Hawk Contracting, by submitting, among other things, the affirmation of David Mei, President of plaintiff, attesting to plaintiff's performance under the parties' agreement, and defendant's breach thereof (NYSCEF Doc. No. 05); the agreement entered into between the parties (NYSCEF Doc. No. 10); and copies of checks reflecting partial payments made to plaintiff from Hawk Contracting (NYSCEF Doc. No. 11).

Further, plaintiff submits proof of proper service upon Hawk Contracting through the Secretary of State (NYSCEF Doc. No. 03); the affirmation of additional mailing in compliance with CPLR § 3215 [g] [4] [iii] (NYSCEF Doc. No. 22); and an attorney affirmation attesting to Hawk Contracting's default (NYSCEF Doc. No. 18) (see CPLR § 3215 [f]; see also Licurgo-Villar v Samouha, 227 AD3d 619, 620 [1st Dept 2024]; Guzetti v City of New York, 32 AD3d 234 [1st Dept 2006]). Accordingly, plaintiff has demonstrated its entitlement to a default judgment against Hawk Contracting in the principal sum of \$73,000.00, together with statutory interest from August 16, 2023.

Plaintiff is not, however, entitled to a default judgment piercing the corporate veil and imposing personal liability upon defendant Piekarski for Hawk Contracting's failure to pay the outstanding balance to plaintiff. The complaint contains no allegations, nor has plaintiff submitted any evidence, demonstrating that Piekarski abused the privilege of conducting business in the corporate form such that he should be liable for Hawk Contracting's breach (see 565 Realty Associates, LLC v Fernandez, 2022 NY Slip Op 32487(U), *3 [Sup Ct NY County 2022]; see also Skanska USA Bldg. Inc. v Atlantic Yards B2 Owner, LLC, 146 AD3d 1, 12 [1st Dept 2016]). "A simple breach of contract, without more, does not constitute a . . . wrong warranting the piercing of the corporate veil" (Skanska USA Bldg. Inc., 146 AD3d at 12, quoting Bonacasa Realty Co., LLC v Salvatore, 109 AD3d 946, 947 [2d Dept 2013]).

Accordingly, it is hereby

ORDERED that plaintiff's B.C.D. TECH INC. motion (seq. no. 02) for a default judgment against defendant HAWK CONTRACTING OF NY INC. is granted; it is further

ORDERED that the Clerk of Court is directed to enter judgment in favor of plaintiff B.C.D. TECH INC. and against defendant HAWK CONTRACTING OF NY INC. in the amount of \$73,000.00, together with interest at the statutory rate from

August 16, 2023, with costs and disbursements as calculated by the Clerk of Court; it is further

ORDERED that plaintiff's B.C.D. TECH INC. motion (seq. no. 02) for a default judgment against defendant ARTHUR PIEKARSKI is denied; it is further

ORDERED that, within twenty days from the date of this decision and order, plaintiff shall serve a copy of this order, with notice of entry, upon defendants, as well as on the Clerk of the Court, who shall enter judgment accordingly; and it is further

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

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

1/23/2026
DATE

Emily Morales-Minerva
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE