Kraus Hi-Tech Home Automation Inc v Horowitz
2026 NY Slip Op 30521(U)
February 3, 2026
Supreme Court, New York County
Docket Number: Index No. 653300/2025
Judge: Nicholas W. Moyne
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. NICHOLAS W. MOYNE** **PART** **41M**

Justice

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KRAUS HI-TECH HOME AUTOMATION INC

Plaintiff,

- v -

LESLIE HOROWITZ,

Defendant.

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INDEX NO. 653300/2025

MOTION DATE 07/29/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

I. BACKGROUND

Plaintiff, Kraus Hi-Tech Home Automation, Inc. ("Kraus"), commenced this action on May 28, 2025, to recover for amounts allegedly owed by the defendant, Leslie Horowitz ("Horowitz"), and asserting claims for breach of contract, unjust enrichment, quantum meruit, and account stated. The underlying action arises from a services contract dated January 23, 2024, wherein the plaintiff agreed to install an "automated audio/visual Home System" at defendant, Leslie Horowitz's residence located at 500 West 18th Street, New York, New York (NYSCEF Doc. No. 1 ¶ 5). In the complaint, Kraus alleges it fully performed the installation of various electronic components, including televisions, speakers, amplifiers, and automated shades, as contracted but defendant failed to pay the outstanding balance for the project, in the amount of $84,351.84 (NYSCEF Doc. No. 1 ¶¶ 14-15, 177-202).

In Motion Sequence 001, Horowitz moves for an order, pursuant to CPLR § 3211(a)(7) and CPLR § 3015(e), dismissing the complaint on the grounds that Kraus failed to allege that it possessed the required licenses from the New York City Department of Consumer and Worker Protection (DCWP) to perform the work at issue.

Kraus opposes the motion and cross-moves for an order, pursuant to CPLR § 3215, seeking entry of a default judgment against the defendant on grounds that the defendant failed to appear or answer within the required time frame. For the reasons set forth below, the defendant's motion is granted in its entirety, and the cross-motion is denied.

II. DISCUSSION

A. Plaintiff's Cross-Motion for Default Judgment

In its' motion, plaintiff seeks entry of a default judgment against the defendant, alleging that defendant failed to appear, answer, or otherwise move in response to the complaint within the applicable time period and failed to seek an extension of time in which to do so. Accordingly, the threshold issue is whether, after service of the summons and complaint for this action, the defendant's motion was timely filed or if the defendant is in default.

The plaintiff contends that as Horowitz was served on June 20, 2025, her time to respond expired on July 20, 2025 (NYSCEF Doc. No. 9, ¶ 22). Therefore, plaintiff argues that the defendant's motion, filed on July 29, 2025, is untimely and defendant is in default. However, this argument is legally incorrect and based on a miscalculation of the statutory deadlines provided by the CPLR.

Plaintiff's assertion that the deadline was July 20, 2025, erroneously conflates the date of filing proof of service with the date service is complete, ignoring the statutorily provided ten-day period (*see Watson v. City of New York*, 157 AD3d 510, 512 [1st Dept 2018] [vacating default as premature where plaintiff failed to account for the 10-day period under CPLR 308[2]). Here, the two affidavits of service filed by Kraus indicate that service was effected pursuant to the methods provided by CPLR § 308(2), delivery to a person of suitable age and discretion, and CPLR § 308(4), affixing to the door, followed by mailing (NYSCEF Doc. No. 2). Pursuant to CPLR § 320(a), where a defendant is served under CPLR 308(2) or (4), the defendant must appear "within thirty days after service is complete." Under both CPLR §§ 308(2) and (4), service is not complete until ten days after the filing of proof of service.

Although the plaintiff's proof of service, the affidavits of service, were filed with the County Clerk on June 20, 2025 (NYSCEF Doc. No. 2), service was complete until ten days later, on June 30, 2025. Accordingly, defendant had thirty days from June 20, 2025, or until July 30, 2025, to appear in the action.

Defendant's motion to dismiss, filed on July 29, 2025 (NYSCEF Doc. No. 3), was made one day prior to the statutory deadline. Accordingly, defendant is not in default, and plaintiff's cross-motion for a default judgment is denied.

B. Defendant's Motion to Dismiss

The defendant moves to dismiss the complaint pursuant to CPLR § 3015(e) and CPLR § 3211(a)(7), alleging that Kraus fails to state a cause of action due to its' failure to plead possession of a required license. As codified in the New York City Administrative Code, DCWP imposes licensing requirements on specific businesses to protect the public and consumers from deceptive, unfair and unconscionable practices, for the maintenance of standards of integrity, honesty and fair dealing among persons and organizations engaging in licensed activities (*see* Administrative Code of City of NY § 20-101). CPLR § 3015(e) provides that where a plaintiff's cause of action against a consumer arises from plaintiff's conduct of a business that is required by local law to be licensed by the DCWP, the complaint "shall allege, as part of the cause of action, that plaintiff was duly licensed at the time of services rendered and shall contain the name and number, if any, of such license." The statute expressly includes that a failure to comply this requirement permits a defendant to move for dismissal under CPLR § 3211(a)(7).

Defendant moves for dismissal, alleging that plaintiff is precluded from maintaining or recovering in this action as Kraus has failed to allege or establish that it was licensed at the time of the contract for services, or the underlying work was performed. CPLR § 3015(e) places the burden of pleading a required license on the contractor and it is an affirmative pleading requirement (*B & F Bldg. Corp. v Liebig*, 76 NY2d 689, 693 [1990]; see also *Capital Const. Mgt. of New York LLC v E. 81st, LLC*, 28 Misc 3d 259, 263 [Sup Ct 2010] ["courts consistently hold that plaintiff must affirmatively show that it was licensed at the time of execution of the contract, at the time of performance, and at the time it filed suit"]). More specifically, defendant alleges that plaintiff has failed to allege that it possesses and/or possessed a license to perform services as a "Service Dealer" of electronics or "Home Improvement Contractor" at the time of the parties' contract and work.

• Service Dealers: NYC Administrative Code § 20-412 requires a license for any person that represents to be or is engaged in business as a "service dealer" of electronic or home appliances. A service dealer includes one who advertises, solicits, sells, or provides a "repair service," defined as "installation, maintenance, repair . . . of electronic or home appliances" (§ 20-411[3]-[4]). Under the statute, "[e]lectronic or home appliances" are defined as "any electronic device . . . that is

commonly used in a household, including, but not limited to televisions, radios, stereo systems, compact disc players, [and] home computer systems" (§ 20-411[5]).

• Home Improvement Contractors: NYC Administrative Code § 20-387 requires a license to solicit, sell, perform or obtain a "home improvement contract", defined as an agreement "for the performance of a home improvement and includes all labor, services and materials to be furnished and performed thereunder" (§ 20-386[6]). "Home improvement" includes alteration, renovation, modernization or improvement to any portion of a building that is used as a residence and includes "[w]ithout regard to the extent of affixation, home improvement shall also include the installation of central heating or air conditioning systems, central vacuum cleaning systems…communication systems" (§ 20-386[2]).

A review of the allegations in the complaint, the contract, and the change orders confirm that the work performed falls squarely within these definitions. In the complaint, plaintiff states that it "installs audio, video, lighting, and other electronic components within high-end residences and businesses" and further admits to selling, providing, and/or installing speakers, televisions, servers, transmitters, power conditioners with controlled outlets, switches, power roller inside and blackout shades, power drapery at windows, wired technology, lighting, equipment racks and mounts, thermostats, and various electrical materials (*id.* ¶¶ 16-163). More specifically, examples of the materials provided or installed included Samsung QLED 4K Smart TVs (55-inch and 85-inch) (NYSCEF Doc. No. 1 ¶¶ 20, 61); Apple TV 4K devices (*id*. ¶ 16); Sony 11.2 channel receivers, amplifiers, and Triad subwoofers (*id.* ¶¶ 25, 45) as part of the "fully automated integrated full-unit customized control system" (NYSCEF Doc. No. 10 ¶ 11).

The plaintiff failed to plead the necessary licensure required by CPLR § 3015(e) for the installation of household electronic appliances and home automation systems. Now, in opposition, Kraus argues that it is exempt from these licensing requirements because the defendant did not purchase individual devices for installation but rather purchased a system that is a "highly sophisticated professional fully integrated full-unit customized automated control system" with modules and applications that are not available to ordinary consumers and require specialized training and expertise to integrate (NYSCEF Doc. No. 10). The plaintiff contends that the nature of this system removes it from the definition of "electronic or home appliance" under Administrative Code § 20-411(5) because the

equipment would not qualify under "commonly used in a household" (*see* NYSCEF Doc. No. 9).

This Court finds the plaintiff's argument unpersuasive. The individual components of the system—televisions, stereo systems, and home computer interfaces—are expressly listed in the Administrative Code as electronic items requiring a license for installation, maintenance, repair, testing, inspection or modification by a service dealer. The fact that plaintiff designed and/or connected these common household items into a more sophisticated network does not exempt the work from the statutory requirement. Rather, this connection of the devices to the "Home System" could likely subject the work to the additional requirement of a home improvement contractor license for the installation of "communication systems" (*see Audio Command Systems, Inc. v. Leavitt*, 2011 WL 121668 [Sup Ct NY County 2011] [finding that a company hired to install audio-visual, stereo, and computer equipment was a "service dealer" required to be licensed]).[1]

Further, plaintiff now contends that all electrical work was performed by defendant's electrician, Einstein Electrical Corp., possessing an Electrical Firm license and Master Electrician License (NYSCEF Doc. No. 10; 16). However, the plaintiff's submission of the third-party electrical license is insufficient. While Einstein Electrical Corp. may have performed the high-voltage electrical work, if any, the terms of the contract and the complaint make it clear that Kraus provided and installed various related electrical equipment or systems. Kraus cannot rely on a subcontractor's license to satisfy its own obligation to be licensed as a service dealer or home improvement contractor for the work it contracted to perform (*see JMT Bros. Realty, LLC v First Realty Builders, Inc.*, 51 AD3d 453, 454 [1st Dept 2008]).

Therefore, based on the allegations herein, it is clear that Kraus failed to allege that it possessed the requisite licenses at the time the subject services were rendered, as strictly required by CPLR § 3015(e). Moreover, the plaintiff's opposition papers effectively concede that Kraus did not and does not possess such licenses, arguing instead that they are unnecessary. Accordingly, strict compliance with the licensing statute(s) are required, "with the failure to comply barring

[1] Additionally, other elements of the plaintiff's work, such as the provision of materials or installation of in-wall equipment, touch-screen devices, power shades, drapery, and HVAC related services could subject the project to home improvement contractor licensing requirements. The complaint includes allegations in which plaintiff admits to performing "HVAC integration" services (NYSCEF Doc. No. 1 ¶¶ 12-14), including providing and installing thermostats, rectifiers/inverters, connecting and programming the devices to the system (*id.* ¶¶ 152-159). Having provided and connected these heating and cooling materials, plaintiff could qualify as a home improvement contractor.

recovery regardless of whether the work performed was satisfactory, whether the failure to obtain the license was willful or, even, whether the homeowner knew of the lack of a license and planned to take advantage of its absence" (*KSP Constr., LLC v LV Prop. Two, LLC*, 224 AD3d 58, 63 [1st Dept 2024] [internal citations omitted]). It is well-settled that an unlicensed contractor forfeits the right to recover damages for breach of contract or under quasi-contract theories such as unjust enrichment or quantum meruit (*see JMT Bros. Realty, LLC v First Realty Bldrs., Inc.*, 51 AD3d 453, 454 [1st Dept 2008]), as allowing recovery under equitable theories would undermine the consumer protection purpose of the licensing statutes. Therefore, the motion by Horowitz to dismiss the complaint in its entirety must be granted.

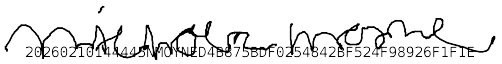
Accordingly, it is hereby

ORDERED that the cross-motion by plaintiff, Kraus Hi-Tech Home Automation, Inc., for a default judgment is DENIED; and it is further

ORDERED that the motion by defendant, Leslie Horowitz, to dismiss the complaint is GRANTED, and the complaint and the above-entitled action are dismissed in their entirety; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.



2/3/2026
DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED		DENIED	GRANTED IN PART	X	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE