

Advance Servicing Inc. v J&J Painting & Contr., Inc.

2026 NY Slip Op 31226(U)

March 27, 2026

Supreme Court, Kings County

Docket Number: Index No. 508100/2023

Judge: Anne J. Swern

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This opinion is uncorrected and not selected for official publication.

At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 27th day of March 2026.

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

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ADVANCE SERVICING INC.,

Plaintiff,

-against-

J&J PAINTING AND CONTRACTING, INC. and JEFFREY A. EKSTROM,

Defendants.

DECISION & ORDER

Index No.: 508100/2023

Calendar No.: 2

Return Date: 1/15/2026

Motion Seq. No.: 2

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Recitation of the following papers as required by CPLR 2219 (a):

**NYSCEF
Papers Numbered**

Notice of Motion, Attorney’s Affirmation in Support,
and Supporting Exhibits.....21-27

Upon the foregoing papers and after oral argument, the decision and order of the Court is as follows:

This is a motion by plaintiff, ADVANCE SERVICING INC. (“plaintiff”), for an order granting this motion in all respects, pursuant to CPLR § 3212 and/or § 3215 (i), directing the entry of judgment in favor of plaintiff and against defendants, J&J PAINTING AND CONTRACTING, INC. and JEFFREY A. EKSTROM (“defendants”), based upon defendants’ failure to comply with the terms of the settlement agreement.

This is an action for a breach of contract against the corporate defendant, J&J PAINTING AND CONTRACTING, INC. (“corporate defendant”), and breach of the personal guaranty by the individual co-defendant, JEFFREY A. EKSTROM (“defendant Ekstrom”). This action was

commenced on March 16, 2023, by the filing of a summons and verified complaint seeking \$33,462.00, a sum certain, that was due and owing pursuant to the terms of the contract. On May 17, 2023, defendants served an answer through counsel. Subsequently, the parties negotiated a Settlement Agreement (“settlement”) dated April 23, 2025. Pursuant to the terms of the settlement, a stipulation of discontinuance would not be filed until defendants’ final payment was received.

Plaintiff asserts that pursuant to Article 3 of the settlement, in the event of defendants’ default, specifically including the failure to make a timely payment, the amount specified therein with interest thereon at the rate of 9% per year, plus specified legal fees and costs and disbursements, shall automatically become due and plaintiff shall be entitled for the immediate entry of judgment for said amount without further notice. Article 2 of the agreement called for a total settlement amount of \$25,000.00 to be paid in accordance with the schedule specified therein. Plaintiff asserts that defendants made payments under the settlement of \$2,500.00 but failed and refused to make any additional payments.

According to the settlement, a notice of default was not required, nor did the settlement provide defendants with a cure period. All settlement payments were required to be payable and delivered to plaintiff’s counsel’s office. Defendants failed to make payment beyond \$2,500, due by July 2, 2025, and thereby defaulted under the terms of the settlement. As such, pursuant to Article 3 of the settlement and based upon defendants’ failure to comply with its terms, plaintiff asserts that \$33,462.00, plus legal fees of \$7,688.40, less payments received of \$2,500.00, with interest thereon at the rate of 9% per annum from February 21, 2023, became due on July 3,

2025. Thus, pursuant to CPLR § 3212 and/or § 3215 (i), plaintiff asserts that they are entitled to the immediate entry of judgment against defendants in the total amount of \$38,650.40.¹

Since this motion is unopposed by defendants and is made pursuant to CPLR § 3215 (i), the motion pursuant to CPLR § 3212 is moot. According to CPLR § 3215 (i), where, after commencement of an action, a stipulation of settlement is made, providing, in the event of failure to comply with the stipulation, for entry without further notice of a judgment in a specified amount with interest, if any, from a date certain, the clerk shall enter judgment on the stipulation and an affidavit as to the failure to comply with the terms thereof, together with a complaint or a concise statement of the facts on which the claim was based, and, if applicable, a statement that the interest rate for consumer debt pursuant to section five thousand four of this chapter applies.

Plaintiff's motion pursuant to CPLR § 3215 (i) is granted. The basis of plaintiff's motion is the settlement agreement, not the original cash merchant agreement. Plaintiff's attorney, who has personal knowledge of the facts alleged in the moving papers and the settlement agreement, affirms that payment by defendants was not made.² Plaintiff and defendants agreed to the settlement and were represented by counsel, thus the agreement is legally binding.

Accordingly, it is hereby

ORDERED that

Plaintiff's motion for an order granting this motion in all respects, pursuant to CPLR § 3215 (i), directing the entry of judgment in favor of plaintiff and against defendants based upon defendants' failure to comply with the terms of the settlement agreement, is GRANTED, and it is further

¹ An affirmation of non-military service was provided by plaintiff, which investigation revealed that the individual co-defendant is not in military service.

² The settlement agreement provides that the payments were to be remitted to plaintiff's attorney, which defendants did not comply with.

ORDERED that plaintiff shall submit a Clerk's judgment in the amount of \$33,462.00, plus legal fees in the amount of \$7,688.40, less payments received in the amount of \$2,500.00, with interest thereon at the rate of 9% per annum from February 21, 2023, totaling \$38,650.40, and it is further

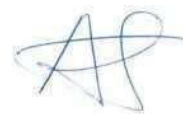
ORDERED that the Clerk shall enter judgment for \$38,650.40, and it is further

ORDERED that plaintiff's motion for an order pursuant to CPLR § 3212 is denied as moot, and it is further

ORDERED that plaintiff shall serve a copy of this Order with Notice of Entry within 30 days of its entry in NYSCEF.

This constitutes the decision and order of the Court.

E N T E R:



Hon. Anne J. Swern, J.S.C.

Dated: 3/27/2026