

**Prosperum Capital Partners LLC v J & J Painting &
Contr. Inc**

2026 NY Slip Op 31294(U)

March 31, 2026

Supreme Court, Kings County

Docket Number: Index No. 508561/2023

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 31st day of March 2026.

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

PROSPERUM CAPITAL PARTNERS LLC D/B/A ARSENAL FUNDING,

Plaintiff,

-against-

J & J PAINTING AND CONTRACTING INC D/B/A
J & J PAINTING AND CONTRACTING and JEFFREY A
EKSTROM,

Defendants.

DECISION & ORDER

Index No.: 508561/2023

Calendar No.: 35

Return Date: 1/15/2026

Motion Seq. No.: 2

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

**NYSCEF
Papers Numbered**

Notice of Motion, Affirmation in Support, and Supporting Exhibits.....20-26

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

This is a motion by plaintiff PROSPERUM CAPITAL PARTNERS LLC D/B/A ARSENAL FUNDING (“plaintiff”) for an order 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 D/B/A J & J PAINTING AND CONTRACTING 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 and breach of personal guaranty by defendants. The action commenced on March 21, 2023, by the filing of a summons and verified complaint,

wherein plaintiff sought \$56,110.90, a sum certain that was due and owing pursuant to the terms of the contract. On May 17, 2023, issue was joined with the service of defendants' answer by and through counsel. The parties then settled this action pursuant to a settlement agreement dated April 23, 2025. In the event of defendants' default, which included 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 to the immediate entry of judgment for said amount without further notice. (See Article 3 of the Settlement Agreement).

Article 2 of the agreement called for a total settlement amount of \$36,000.00 to be paid in accordance with the payment schedule specified therein. According to plaintiff, defendants made payments under the settlement agreement totaling the sum of \$3,500.00 but failed and refused to make any additional payments. The settlement agreement does not require a notice of default, nor does it 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 the payment, which was due by July 2, 2025, and thereby defaulted under the terms of the settlement agreement.

Consequently, plaintiff asserts that pursuant to Article 3 of the settlement agreement and based upon defendants' failure to comply, the sum of \$56,110.90, plus legal fees in the amount of \$11,222.18, less payments received in the amount of \$3,500.00, with interest thereon at the rate of 9% per annum from February 15, 2023, became due on July 3, 2025. And that pursuant to CPLR § 3212 and/or 3215 (i), plaintiff is entitled to the immediate entry of judgment against defendants in the total amount of \$63,833.08.¹

¹ Plaintiff's counsel's office investigated with the Defense Manpower Datacenter of the Department of Defense, which investigation revealed that the individual co-defendant, JEFFREY A EKSTROM, is not in military service.

Since this motion is unopposed by defendants and is made pursuant to CPLR § 3215 (i), the motion pursuant to CPLR § 3212 is moot. When the parties enter into a stipulation of settlement after the action is commenced that provides for entry of a judgment without further notice 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. The complaint shall be accompanied by 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. (See CPLR § 3215 [i]).

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 received by him in accordance with the Settlement Agreement. 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

ORDERED that plaintiff shall submit a Clerk's judgment in the amount of \$56,110.90, plus legal fees in the amount of \$11,222.18, less payments received in the amount of \$3,500.00, with interest thereon at the rate of 9% per annum from February 15, 2023, which became due on July 3, 2025, totaling \$63,833.08, and it is further

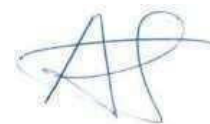
ORDERED that the Clerk shall enter judgment for \$63,833.08, and it further

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.

ENTER:



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

Dated: 3/31/2026