

**Commissioners of the State Ins. Fund v Capcon
Constr. Indus. Corp.**

2026 NY Slip Op 31767(U)

April 20, 2026

Supreme Court, New York County

Docket Number: Index No. 452680/2024

Judge: Matthew V. Grieco

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. MATTHEW V. GRIECO PART 30M

Justice

INDEX NO. 452680/2024
MOTION DATE 02/09/2026
MOTION SEQ. NO. 003

THE COMMISSIONERS OF THE STATE INSURANCE FUND,

Plaintiff,

- v -

CAPCON CONSTRUCTION INDUSTRIES CORP., CAPCON CONSTRUCTION SUPPLY CORP., JAB MASONRY CORP., AGRA MASONRY INC., AGRA INDUSTRIES USA CORP, A & A MASONRY CORP., ALEXANDER SHVARTSBERG, DARREN CAPUTO, MARYANN FURMAN

Defendants.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 66, 67, 68, 69 were read on this motion to/for JUDGMENT - DEFAULT.

Upon the foregoing documents, and for the reasons stated infra, plaintiff's motion for a default judgment is denied without prejudice.

On February 21, 2019, plaintiff, the Commissioners of the State Insurance Fund ("SIF"), obtained a judgment against defendant A&A Masonry Corp. ("A&A") in the amount of \$333,301.65, for unpaid insurance premiums from March 6, 2015 to January 4, 2018 ("A&A Judgment"), which, with interest from the date of entry, remains due (see NYSCEF Doc. No. 1 [Summons and Verified Complaint]).

On January 12, 2022, SIF obtained a judgment against defendant Agra Masonry,

1 New York County Index No. 452235/2018, NYSCEF Doc. No. 11.

2 Comprised of \$315,162.93 damages, \$17,873.62 interest, and \$265.00 costs and disbursements.

Inc. (“Agra Masonry”)³ in the amount of \$5,398,564.69⁴ for unpaid insurance premiums from March 8, 2018 to January 20, 2021 (“Agra Masonry Judgment”), which, with interest from the date of entry, remains due (*see* NYSCEF Doc. No. 1 [Summons and Verified Complaint]).

On September 27, 2024, SIF commenced this action against Capcon Construction Industries Corp. (“CCI”), Capcon Construction Supply Corp. (“CCS”), JAB Masonry Corp. (“JAB”), Agra Masonry Inc. (“Agra Masonry”), Agra Industries USA Corp. (“Agra Industries”), A&A Masonry Corp. (“A&A”), Alexander Shvartsberg, Darren Caputo, and Maryann Furman, alleging liability for the Agra Masonry Judgment. The verified complaint alleges the following facts: Agra Masonry obtained a policy of workers’ compensation insurance from SIF by making false statements on an application for insurance that it submitted to SIF (i.e. by not disclosing that Shvartsberg, who was in control of A&A, was also in control of Agra Masonry); Agra Masonry ran up a balance of premiums on that policy in the amount of \$5,173,772.15; the policy was cancelled by SIF for non-payment; SIF was awarded the Agra Masonry Judgment; and the corporate defendants are controlled by the same principals and operate as a single de facto enterprise, with overlapping equipment, customers, revenue, supervisors, and employees (paid alternatively by the various companies). Moreover, Shvartsberg, Caputo, and Furman intentionally diverted funds and assets from Agra Masonry to Agra Industries to frustrate SIF’s collection efforts (*see* NYSCEF Doc. No. 1 [Summons and Verified Complaint]).

³ New York County Index No. 453540/2021, NYSCEF Doc. No. 11.

⁴ Comprised of \$5,173,772.15 damages, \$224,527.54 interest, and \$265.00 costs and disbursements.

The complaint asserts causes of action: (1) for alter ego liability against defendants Shvartsberg, Caputo, Furman, CCI, CCS, A&A, JAB, and Agra Industries for the Masonry Judgment as alter egos of Agra Masonry; (2) for successor liability against defendants Agra Industries and/or CCI for the Masonry Judgment as successors of Agra Masonry; (3) under Debtor Creditor Law (“DCL”) § 273 for judgment against defendants to the extent of all assets transferred from Agra Masonry, CCS, A&A, and JAB to Shvartsberg, Caputo, Furman, Agra Industries, and/or CCI; (4) under DCL § 276 for judgment against Shvartsberg, Caputo, Furman, CCI, and Agra Industries to the extent of all assets transferred from Agra Masonry to Agra Industries and/or CCI and/or themselves; (5) under DCL § 276-a and/or State Finance Law § 18(5) for attorneys’ fees and other expenses; and (6) under Workers’ Compensation Law (“WCL”) § 96(2) for treble damages against Shvartsberg, Caputo, Furman, Agra Masonry, CCS, A&A, JAB, Agra Industries, and/or CCI for insurance fraud (NYSCEF Doc. No. 1 [Summons and Verified Complaint]).

Plaintiff and defendants CCI, CCS, JAB, Caputo, and Shvartsberg filed several joint stipulations, ultimately extending those defendants’ time to respond to the complaint to February 24, 2025 (NYSCEF Doc. Nos. 16, 17, 19, 29, 31-33).

On November 6, 2024, plaintiff and defendants Agra Masonry and Furman filed a joint stipulation (NYSCEF Doc. No. 18), extending those defendants’ time to respond to the complaint to December 6, 2024. On December 6, 2024, defendants Agra Masonry and Furman moved to dismiss the complaint as against them (NYSCEF Doc. Nos. 20-26, Mot. Seq. No. 1). On July 3, 2025, the Court (Arthur F. Engoron, J.) denied the motion in full, finding that plaintiff had sufficiently pled all six causes of action as

against them (NYSCEF Doc. No. 64). On July 16, 2025, defendants Agra Masonry and Furman filed an answer to the complaint (NYSCEF Doc. No. 65).

On February 12, 2025, defendant Shvartsberg filed an answer with cross-claims (NYSCEF Doc. No. 34).

On February 18, 2025, defendants CCI, CCS, JAB, and Caputo filed a motion to dismiss the complaint as against them (NYSCEF Doc. Nos. 35-39, Mot. Seq. No. 2), which plaintiff opposed (NYSCEF Doc. Nos. 40-59). On May 7, 2025, plaintiff discontinued without prejudice the action against those defendants only (i.e. CCI, CCS, JAB, and Caputo), by a joint stipulation of discontinuance (NYSCEF Doc. No. 63). In light of that stipulation, on May 8, 2025, the Court (Engoron, J.) denied without prejudice the motion to dismiss the complaint as against them (NYSCEF Doc. 63).

On November 13, 2025, plaintiff moved for a default judgment pursuant to CPLR 3215 against non-answering defendants Agra Industries and A&A on the following causes of action: the first, for alter ego liability for the Masonry Judgment as alter egos of Agra Masonry, in the amount of \$5,398,564.69 plus interest from January 12, 2022; the fifth, pursuant to DCL § 276-a and/or State Finance Law § 18(5), for attorneys' fees and other expenses in the amount of \$1,187,684.23 (representing 22% of collection costs for the amount due in the first cause of action); and the sixth, pursuant to WCL § 96(2), for treble damages for insurance fraud, in the amount of \$15,521,316.45 (representing three times the amount demanded in the first cause of action, i.e. \$5,173,772.15). Plaintiff also seeks the discontinuance of all other causes of action against defendants Agra Industries and A&A without prejudice (NYSCEF Doc. Nos. 66-69).

A plaintiff seeking default judgment against a non-appearing defendant must move within one year of the default (*see* CPLR 3215[c]), and file proof of: (1) service of

the summons and complaint, or summons with notice; (2) the facts constituting the claim; and (3) the default (*see* CPLR 3215[f]; *Bigio v Gooding*, 213 AD3d 480, 481 [1st Dept 2023]).

To establish the “facts constituting the claim,” the movant need only demonstrate “enough facts to enable a court to determine that a viable cause of action exists” (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]), which can be effected by affidavit of a party or by verified complaint, if one has been properly served (*see id.* at 70; CPLR 3215[f]). The “standard of proof is not stringent, amounting only to some firsthand confirmation of the facts” (*Joosten v Gale*, 129 AD2d 531, 535 [1st Dept 1987]).

Plaintiff commenced this action on September 27, 2024, by filing the summons and verified complaint (NYSCEF Doc. No. 1; *see* CPLR 304[a]). Service on defendants Agra Industries and A&A, by personally delivering two copies of the summons and complaint to the Secretary of State (*see* Business Corporation Law § 306[b]), was effected (and completed⁵) on October 7, 2024 (NYSCEF Doc. Nos. 7-8), which was within 120 days of commencement of the action (*see* CPLR 306-b). Defendants Agra Industries and A&A therefore had until November 8, 2024 to answer or appear (*see* CPLR 320[a]; General Construction Law § 25-a).

Plaintiff’s motion for a default judgment, filed November 13, 2025 (NYSCEF Doc. No. 66-69), was untimely (*see* CPLR 3215[c]). However, this Court, in its discretion, will consider the motion in light of the following: plaintiff’s delay of 5 days was *de minimis* and non-prejudicial; plaintiff has demonstrated a meritorious cause of action; plaintiff’s

⁵ Service of process on a corporation is complete when the Secretary of State is served, irrespective of whether the process subsequently reaches the corporate defendant (*see Fisher v Lewis Constr. NYC Inc.*, 179 AD3d 407, 408 [1st Dept 2020]).

continuous and consistent filing activity evinced a lack of intent to abandon its claims; plaintiff stipulated to multiple adjournments with many other defendants, perhaps causing confusion as to the date of default for defendants Agra Industries and A&A; plaintiff discontinued without prejudice the action against CCI, CCS, JAB, and Caputo, demonstrating a lack of intent to abandon its claims against the remaining defendants; and, as of the date of this order, Agra Industries and A&A have not answered or moved in response to the instant motion (*see Pappoe v Custodio*, 156 AD2d 211 [1st Dept 1989] [grant of late default judgment motion affirmed, given the plaintiff's forbearance to allow the defendant's insurance carrier to investigate, the plaintiff's affidavit of merit was uncontested, the plaintiff engaged in activity well within the CPLR 3215(c) one-year period, and the delay was caused by the defendant's inability to locate a named but unserved party]; *Sanders v Aziz*, 101 AD2d 734 [1st Dept 1984] [complaint should not have been dismissed pursuant to CPLR 3215(c) where meritorious claim existed and the defendant was not prejudiced by the minimal delay]; *compare Cabral v Mueses*, 234 AD3d 475, 476 [1st Dept 2025] [affirming denial of default motion and dismissal of complaint where the plaintiff brought the motion over two years after default, and although the plaintiff's attorney's letters to the defendant's insurance carrier showed initial lack of intent to abandon the claim, the plaintiff did not address the 16-month period of inactivity immediately prior to the default motion]; *Utak v Com. Bank Inc.*, 88 AD3d 522, 522-523 [1st Dept 2011] [complaint should have been dismissed pursuant to CPLR 3215(c) where the plaintiff waited over two years after commencing the action before requesting judicial intervention, and did not demonstrate a meritorious cause of action, and the complaint was based on hearsay]).

Plaintiff SIF has established proper service and additional service in compliance with CPLR 3215(g)(4) (NYSCEF Doc. Nos. 7, 8, 13-15, 68).

However, plaintiff has not submitted sufficient proof of the facts constituting the claim. As to the first count, alter ego liability, most of the allegations in the complaint rely on information and belief, without any reference to the source of the information or the grounds for the belief; other allegations are made baldly without sources. Although the complaint is verified by Michael Totaro, Esq., the Director of Legal Collections for SIF, Totaro affirms that the sources of information and the grounds of belief are “records of The State Insurance Fund, and other information consisting of communications and statements made by and to the representatives of the State Insurance Fund, including its attorneys and representatives” (NYSCEF Doc. No. 1 at 15). Plaintiff’s vague reference to communications and statements made by and to SIF representatives does not meet plaintiff’s burden (*see Cedar Cap. Mgmt. Grp. Inc. v Lillie*, 77 Misc3d 1217[A] [Sup Ct, NY County 2022] [default judgment partially denied where allegations in complaint regarding commingling of assets and domination of one company over another were stated on information and belief, and the affidavit of merit relied exclusively on the complaint]; *compare Almodovar v All State Gen. Bldg. & Remodeling Contractors, Inc.*, 166 AD2d 396 [1st Dept 1990] [motion to vacate default judgment properly denied where there was substantial evidence that the individual defendant used the corporate defendant as an alter ego for personal ends]).⁶


⁶ This Court has also reviewed the affirmation of plaintiff’s counsel in support of the motion for default judgment (NYSCEF Doc. No. 67), as well as plaintiff’s counsel’s affirmation and accompanying exhibits in opposition to the motion of defendants Agra Masonry and Furman to dismiss the complaint (NYSCEF Doc. No. 40). The former largely references the complaint; the latter contains several exhibits, but they either consist of mere allegations in separate cases pending cases against defendants, or are

In light of that determination, plaintiff's motion as to the fifth and sixth causes of action, DCL § 276-a and/or State Finance Law § 18(5) and WCL § 96(2), respectively, necessarily fails, because, as pleaded, they are dependent on alter ego liability.

Accordingly, it is

ORDERED that plaintiff's motion for a default judgment is denied, without prejudice to renew.

This constitutes the decision and order of the Court.

<u>4/20/2026</u> DATE		 MATTHEW V. GRIECO, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE

insufficient to support a default judgment (*see e.g. Yu v BuyerGenomics Techs LLC*, 67 Misc3d 1237[A] [Sup Ct, NY County 2020] [fact that two companies shared the same office space, alone, was insufficient to establish alter ego liability]).