

Embassy Cargo, Inc. v Europa Woods, LLC
2017 NY Slip Op 31259(U)
May 31, 2017
Supreme Court, New York County
Docket Number: 654263/2016
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

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Embassy Cargo, Inc.,

Plaintiff,

Index No.
654263/2016

**DECISION and
ORDER**

- against -

Mot. Seq. #001

Europa Woods, LLC d/b/a Europa Woods,

Defendant.

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HON. EILEEN A. RAKOWER, J.S.C.

This is an action for breach of contract, unjust enrichment, quantum meruit and account stated. Plaintiff Embassy Cargo, Inc., (“Embassy”) is a freight forwarding company that arranges for the transport and delivery of goods. (Embassy complaint at 4) Embassy entered into a contract with Defendant Europa Woods, LLC d/b/a Europa Woods (“Europa”) from March 2015 through October 2016. Embassy promised to transport goods in exchange for payment from Europa. (Embassy complaint at 4). However, once Embassy performed the shipping services and billed Europa, Europa refused to pay.

Embassy therefore commenced this action by filing a summons and complaint on August 12, 2016 seeking damages against Europa in the amount of \$21,596.39. Embassy received \$7,000 from Europa between September 2016 and December 2016. Embassy now moves for a default judgement against Europa pursuant to CPLR 3215 for \$14,596.39, late fees of 18% per annum from November 7, 2015, costs and attorneys’ fees.

In support, Embassy submits the affidavit of its Chief Executive Officer, Alessio Mealli; Embassy’s invoices billed to Europa; the attorney affirmation of Alexander R. Fink, Esq.; the summons and complaint dated August 11, 2016; the certification of Eagle County Sheriff James Van Beek dated August 26, 2016 with respect to the summons and complaint served on Brian Carey, Europa’s owner;

Alexander R. Fink, Esq.'s affidavit of additional service and notice of additional mailing dated September 20, 2016; a bill of costs; a proposed order granting Embassy's motion for default judgment; Shannen Spiess' affidavit of service dated May 8, 2017 and Embassy's Request For Judicial Intervention form dated May 8, 2017.

In his affirmation, Alexander R. Fink, Esq. avers that Europa was served on August 24, 2016. (aff of plaintiff's counsel at 1) Additionally, Eagle County Sheriff James Van Beek certifies that on August 24, 2016, "Brian Carey, Owner of Europa Woods, LLC dba Europa Woods was served at [824 Chambers Avenue United B8 Eagle, CO 81631] at 2:58 PM." (plaintiff's exhibit 2 at 1)

Embassy's invoices billed to Europa evidence an outstanding balance as of June 28, 2016 in the amount of \$21,596.29 and provide that, "A LATE FEE of 1.5% per month (18% per annum) will be paid on any past due accounts over 30 days. Customer shall be responsible for all costs of collection, including but not limited to all agency and attorney fees. All matters shall be governed by the laws of New York and venued in the City, State or Federal Courts of New York." (plaintiff's exhibit A)

Alexander R. Fink, Esq. avers that he spent 6 hours of time on this matter and his billable rate is \$350.00 per hour. (affirmation of plaintiff's counsel at 2) However, Embassy does not submit any additional information.

Defendant Europa does not oppose.

CPLR 3215 (a) provides that "When a defendant has failed to appear . . . the plaintiff may seek a default judgment against him." "On any application for judgment by default, the applicant shall file proof of service of the summons and the complaint . . . and proof of the facts constituting the claim, the default and the amount due by affidavit made by the party . . ." (CPLR 3215 [f]) "Proof of service shall be in the form of a certificate if the service is made by a sheriff or other authorized public officer . . ." (CPLR 306 [d])

With respect to service upon a limited liability company, CPLR 311-a (a) provides that,

"Service of process . . . shall be made by delivering a copy personally to (i) any member of the limited liability

company in this state, if the management of the limited liability company is vested in its members, (ii) any managers of the limited liability company in this state, if the management of the limited liability company is vested in one or more managers, (iii) to any other agent authorized by appointment to receive process, or (iv) to any other person designated by the limited liability company to receive process, in the manner provided by law for service of a summons as if such person was a defendant. Service of process upon a limited liability company may also be made pursuant to article three of the limited liability company law.”

CPLR 313 provides,

“A person . . . subject to the jurisdiction of the courts of the state . . . may be served with the summons without the state, in the same manner as service is made within the state, by any person authorized to make service within the state who is a resident of the state or by any person authorized to make service by the laws of the state . . . in which service is made.”

Here, Embassy files proof of service by filing the certification of Eagle County Sheriff James Van Beek wherein he certifies that on August 24, 2016 “Brian Carey, Owner of Europa Woods, LLC dba Europa Woods was served at [824 Chambers Avenue United B8 Eagle, CO 81631] at 2:58 PM . . .” (plaintiff’s exhibit 2 at 1) This method of service comports with CPLR 311-a (a) because Europa was served by personal delivery of the summons and complaint to its member and owner Brian Carey. The certification by Colorado Sheriff James Van Beek is sufficient under CPLR 306 (d) and CPLR 313 because service was made by a sheriff or other authorized public figure outside of New York.

Embassy files proof of the facts constituting the claim by filing the invoices evidencing an outstanding balance as of June 28, 2016 in the amount of \$21,596.29. The invoices also provide that Europa is subject to a late fee of 1.5% per month (18% per annum) on any past due accounts over 30 days and reasonable attorneys’ fees. Embassy provides proof of the amount of due by filing the affidavit of Alessio Mealli who avers that Europa owes Embassy “\$14,596.39, plus late fees of 18% per annum from November 7, 2015, court costs and reasonable attorneys’ fees.” (aff of Alessio at 4) Embassy files proof of default by filing the

attorney affirmation of Alexander R. Fink, Esq. (affirmation of plaintiff's counsel at 2)

Wherefore, it is hereby,

ORDERED and ADJUDGED that Plaintiff Embassy Cargo, Inc.'s motion for a default judgment pursuant to CPLR 3215 against Defendant Europa Woods, LLC d/b/a Europa Woods is granted in the amount of \$14,596.39 plus late fees of 18% per annum from November 7, 2015 until entry of judgment, as calculated by the Clerk, together with costs and disbursements, as taxed by the Clerk; and it is further

ORDERED that the matter of reasonable attorneys' fees owed to Plaintiff Embassy Cargo, Inc. is referred to a Special Referee to hear and report with recommendations; and it is further

ORDERED that a copy of this order with notice of entry shall be served on the Clerk of the Reference Part (Room 119A) to arrange for a date for the reference to a Special Referee and the Clerk shall notify all parties, including defendants, of the date of the hearing.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: May 31, 2017


EILEEN A. RAKOWER, J.S.C.