

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SUNNY FARMS LANDFILL LLC,

Plaintiff,

-against-

RAIL SOLUTIONS, LLC,

Defendant.
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Order
15-cv-5988(ADS)(AKT)

**FILED
CLERK**

9/11/2017 1:00 pm

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

APPEARANCES:

Read Law Group, PLLC

Attorneys for the Plaintiff

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Garden City, NY 11530

By: Christopher M. Read, Esq.
Patrick J. Sullivan, Esq., Of Counsel

Cohen & Slamowitz LLP

Attorneys for the Defendant

199 Crossways Park Drive

Woodbury, NY 11797

By: Leandre M. John, Esq., Of Counsel

SPATT, District Judge:

On October 19, 2015, the Plaintiff Sunny Farms Landfill, LLC commenced this diversity breach of contract action against the Defendant Rail Solutions, LLC and the individual Defendant Theodore M. Vozzella.

In general, the complaint alleged that the Plaintiff, an Ohio corporation operating a waste disposal site, contracted with the Defendant, a Georgia corporation facilitating the removal and transfer of waste, for the transfer of a certain load from a designated location in Brentwood, New York, to the Plaintiff's disposal site in Ohio. Despite the Plaintiff's performance under the agreement, the Defendant has allegedly refused to tender the full payment owed to the Plaintiff.

On January 4, 2016, both Defendants appeared in this action by counsel.

On or about December 23, 2016, after initially filing an answer to the complaint, Vozzella consented to the entry of a judgment against him and was removed from this case.

However, no answer or other response to the complaint was ever filed on behalf of the Defendant Rail Solutions, LLC, and on September 15, 2016, the Clerk of the Court noted its default.

On January 13, 2017, the Plaintiff filed a motion for entry of a default judgment against Rail Solutions, LLC, which the Court referred to United States Magistrate Judge A. Kathleen Tomlinson for a recommendation on the issues of liability and damages.

On August 24, 2017, Judge Tomlinson issued a report and recommendation (the “R&R”), recommending that the motion for a default judgment be partially granted, with leave to submit additional supporting information at a later date.

Namely, Judge Tomlinson found that the Plaintiff had established its *prima facie* entitlement to a default judgment on its claims for breach of contract; breach of the implied covenant of good faith and fair dealing; and account stated. However, having determined that a valid contract-based claim existed, Judge Tomlinson found it unnecessary to consider the Plaintiff’s alternative theories sounding in unjust enrichment; promissory estoppel; *quantum meruit*; and fraud, which claims, under the circumstances, would be duplicative of a cause of action for breach of contract.

With respect to damages, after conducting a thorough review of the materials submitted in support of the amount sought by the Plaintiff, Judge Tomlinson recommended an award totaling \$396,742.96. Although this is substantially less than the Plaintiff originally sought, the R&R outlines in detail those elements of the Plaintiff’s requested damages for which there was insufficient proof, and recommended that this Court grant the Plaintiff an opportunity to cure those defects through supplemental submissions within 30 days.

Finally, acknowledging that the Defendant’s principal, namely, Vozzella, consented to the entry of judgment against him, individually, in the full amount sought by the Plaintiff in its

complaint, Judge Tomlinson recommended that the corporate Defendant and Vozzella be held jointly and severally liable for any damages awarded on the present motions.

On August 25, 2017, the Plaintiff filed proof of service of the R&R on the Defendant. More than fourteen days have elapsed, and the Defendant has neither filed an objection to the R&R nor requested an extension of time to do so.

Therefore, pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, this Court has reviewed the R&R for clear error, and finding none, now concurs in both its reasoning and its result.

Accordingly, the August 24, 2017 Report and Recommendation is adopted in its entirety, and the Plaintiff's motion for a default judgment is granted to the extent set forth above.

Further, on Judge Tomlinson's recommendation, the Court grants the Plaintiff until October 11, 2017 to file supplemental materials in further support of its damages request. If, by that date, the Plaintiff has not done so, the Clerk of the Court is respectfully directed to enter judgment for the Plaintiff in the sum of \$396,742.96, and to close this case.

It is **SO ORDERED**:

Dated: Central Islip, New York
September 11, 2017

/s/ Arthur D. Spatt
ARTHUR D. SPATT
United States District Judge