

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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AMERICAN EMPIRE SURPLUS LINES INSURANCE
COMPANY,

Plaintiff,

v.

IRON, INC., and PRE-FAB CONSTRUCTION
SERVICES, INC.,

Defendants.
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For Online Publication Only

ORDER

15-CV-7048 (JMA) (SIL)

**FILED
CLERK**

1/10/2017 3:56 pm

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

AZRACK, United States District Judge:

Plaintiff American Empire Surplus Lines Insurance Company has filed a motion for default judgment against defendants Iron, Inc., and Pre-Fab Construction Services, Inc. (collectively, the “Iron Entities”). The Iron Entities were properly served and have failed to appear in this suit. After reviewing the plaintiff’s motion and supporting papers, the Court GRANTS the motion for default judgment against the Iron Entities and finds them jointly and severally liable in the amount of \$198,062.28. The Court DENIES plaintiff’s request for attorney’s fees.

A. Liability

When a defendant defaults, the Court is required to accept all of the factual allegations in the complaint as true and draw all reasonable inferences in the plaintiff’s favor. Finkel v. Romanowicz, 577 F.3d 79, 84 (2d Cir. 2009). However, the Court also must determine whether the allegations in the complaint establish the defendant’s liability as a matter of law. Id.

Plaintiff alleges that the Iron Entities breached their insurance contract with plaintiff when they failed to pay a required additional premium. The allegations in the complaint are sufficient to establish the Iron Entities’ liability for breach of contract.

B. Damages

“[W]hile a party’s default is deemed to constitute a concession of all well pleaded allegations of liability, it is not considered an admission of damages.” Bricklayers & Allied Craftworkers Local 2, Albany, N.Y. Pension Fund v. Moulton Masonry & Const., LLC, 779 F.3d 182, 189 (2d Cir. 2015) (quoting Cement & Concrete Workers Dist. Council Welfare Fund v. Metro Found. Contractors, Inc., 699 F.3d 230, 234 (2d Cir. 2012)). The Court must conduct an inquiry to “ascertain the amount of damages with reasonable certainty.” Credit Lyonnais Sec., Inc. v. Alcantara, 183 F.3d 151, 155 (2d Cir. 1999) (citing Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp., 109 F.3d 105, 111 (2d Cir. 1997)). “There must be an evidentiary basis for the damages sought by plaintiff, and a district court may determine there is sufficient evidence either based upon evidence presented at a hearing or upon a review of detailed affidavits and documentary evidence.” Cement & Concrete Workers Dist. Council Welfare Fund, 699 F.3d at 234. District courts may hold an inquest by affidavit without a hearing so long as the court has “ensured that there was a basis for the damages specified in the default judgment.” Transatlantic Marine, 109 F.3d at 111.

The affidavits and letters submitted with plaintiff’s motion for default judgment establish to a reasonable certainty that plaintiff is entitled to \$178,941.88 in damages.

Plaintiff has also requested interest. Under New York law, plaintiff is entitled to prejudgment interest of 9% per annum, running from the date of the breach. N.Y. C.P.L.R. § 5004. Per diem interest works out to \$44.12 per day. Here, the date of the breach is November 17, 2015. (See Ltr. dated 10/28/2015, ECF No. 12-6.) Accordingly, plaintiff is entitled to \$18,530.40 in interest.

Plaintiff has also requested attorney's fees. Plaintiff, however, has not identified any statutory or contractual basis for an attorney's fee award in this case. Accordingly, plaintiff's request for attorney's fees is denied. Plaintiff, however, is awarded \$590 in costs for the filing and service of the complaint.

C. CONCLUSION

The Clerk of the Court is respectfully directed to enter judgment, jointly and severally, against defendants Iron, Inc., and Pre-Fab Construction Services, Inc., in the amount of \$198,062.28.

SO ORDERED.

Dated: January 10, 2017
Central Islip, New York

/s/ (JMA)
JOAN M. AZRACK
UNITED STATES DISTRICT JUDGE