

**Wei's Intl. Trading Corp. v Unitex Logisitics USA,
Inc.**

2017 NY Slip Op 31120(U)

May 23, 2017

Supreme Court, New York County

Docket Number: 162237/2015

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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 Wei's International Trading Corp.,

Plaintiff,

Index No.
 162237/2015

**DECISION and
 ORDER**

- against -

Mot. Seq. #001

Unitex Logistics USA, Inc. d/b/a
 Unitex Intercontinental, Unitex International Forwarding (HK)
 Ltd., AZ Container Freight Station, Inc., "John Doe 1-10," and
 "XYZ Company 1-10,"

Defendant.

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

This is an action for breach of contract, unjust enrichment and conversion. In July and August of 2015, Plaintiff Wei's International Trading Corp., ("Wei's International") purchased 140 cartons of LED lightbulbs for \$40,000. To ship these lightbulbs from China to New York, Wei's International contracted with a forwarding company, Defendant Unitex International Forwarding (HK) Ltd. ("Unitex Forwarding"). Pursuant to the Bill of Lading provided by Unitex Forwarding to Wei's International, Wei's International applied to Defendant Unitex Logistics USA, Inc.¹ ("Unitex Logistics") for delivery of the goods. The lightbulbs arrived in New York on October 19, 2015. But on October 30, 2015, Unitex Logistics informed Wei's International that the lightbulbs were not available for pick up. Wei's International demanded the lightbulbs on November 2nd and 4th of 2015 but never received them. Because Unitex Logistics withheld the lightbulbs, Wei's International claims that it suffered approximately \$36,805 in lost profits. To avoid losing any more profits, Wei's International made a second purchase of the same LED lightbulbs at the same rate but incurred additional shipping costs of \$1,600. (aff of Ding at 3) On January 25, 2016, Wei's International received the original

¹ Unitex Logistics USA, Inc. is a corporation organized under the laws of New York.

shipment of lightbulbs from Unitex Logistics but 6 boxes, valued at \$175.29, were destroyed. (aff of Ding at 3)

Wei's International therefore commenced this action by summons and complaint on November 30, 2015. With respect to Unitex Logistics, Wei's International seeks damages for breach of contract in an amount no less than \$30,000, unjust enrichment in the amount of \$40,000, conversion in an amount no less than \$40,000, pre-judgment interest, punitive damages in an amount no less than \$100,000, incidental and consequential damages including lost profits in an amount no less than \$30,000, and attorney's fees with costs and expenses. Wei's International now moves for a default judgment pursuant to CPLR 3215 against Unitex Logistics "on claims for sums certain," and requests "an inquest for consequential and punitive damages." (affirmation of plaintiff's counsel at 4)

In support, Wei's International submits the attorney affirmation of Christopher J. Camera, Esq.; the summons and complaint; the bill of lading bearing number LHLDSZXNYCK153583; an ocean cargo arrival notice bearing reference number UNI0014901; an email dated October 30, 2015 from Lex Collure, the President of Unitex Logistics, to Irene Xu, informing her that Wei's International's shipment is on hold; Irene Xu's email in response; a demand letter for the lightbulbs dated November 4, 2015 from Wei's International to Lex Collure; Sean Warner's affidavit of service with respect to the summons and complaint served on Unitex Logistics pursuant to "Partnership Law § 121-109(A) (LP'S)" dated December 10, 2015; Kevin Reider's affidavit of service with respect to the summons and complaint served on AZ Container Freight State², Inc. dated December 11, 2015; a letter dated July 27, 2016 from Wei's International to Unitex Logistics wherein Wei's International states that Unitex Logistics is in default; a second copy of the summons and complaint served on Unitex Logistics and the affidavit of Zhiwei Ding dated January 12, 2017.

In his affirmation, Christopher J. Camera avers that the summons and complaint were served on Unitex Logistics on December 10, 2015 via the Secretary of State of New York. (affirmation of plaintiff's counsel at 2) In addition, Sean Warner avers in his affidavit of service that on December 10, 2015, he served Unitex Logistics pursuant to "Partnership Law § 121-109 (A) (LP's)" by delivering and leaving 2 true copies of the summons and complaint with Sue Zouky, an authorized

² A stipulation of discontinuance was executed between Wei's International and Defendant AZ Container Freight Station Inc. on February 4, 2016. (affirmation of plaintiff's counsel at 2)

agent in the Office of the Secretary of State. (plaintiff's exhibit B) Sean Warner also avers that he also paid the Secretary of State a fee of \$40 dollars. (plaintiff's exhibit B)

Defendant Unitex Logistics 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]) The standard of proof on an application for judgment by default is not stringent, "amounting only to some firsthand confirmation of the facts". (*Feffer v Malpeso*, 210 A.D.2d 60, 61 [1st Dept 1994])

Business Corporation Law § 306 (b) (1) provides that "Service of process on the secretary of state as agent of a domestic or authorized foreign corporation shall be made by personally delivering to and leaving with the secretary of state or a deputy, or with any person authorized by the secretary of state to receive such service, at the office of the department of state in the city of Albany, duplicate copies of such process together with the statutory fee, which fee shall be a taxable disbursement. Service of process on such corporation shall be complete when the secretary of state is so served . . ."

CPLR 3215 (g) (4) (i) provides that, "When a default judgment based upon non-appearance is sought against a domestic or authorized foreign corporation which has been served pursuant to paragraph (b) of section three hundred six of the business corporation law, an affidavit shall be submitted that an additional service of the summons by first class mail has been made upon the defendant corporation at its last known address at least twenty days before the entry of judgment."

CPLR 3215 (g) (4) (ii) provides that, "The additional service of the summons by mail may be made simultaneously with or after the service of the summons on the defendant corporation pursuant to paragraph (b) of section three hundred six of the business corporation law, and shall be accompanied by a notice to the corporation that service is being made or has been made pursuant to that provision. An affidavit of mailing pursuant to this paragraph shall be executed by the person mailing the summons and shall be filed with the judgment. Where there has been compliance

with the requirements of this paragraph, failure of the defendant corporation to receive the additional service of summons and notice provided for by this paragraph shall not preclude the entry of default judgment.”

As proof of service in this case, Wei’s International submits the affidavit of Sean Warner. (plaintiff’s exhibit B) Therein Warner avers that he served the summons and complaint on Unitex Logistics pursuant to “Partnership Law § 121-109 (A) (LP’s).” (plaintiff’s exhibit B) However Unitex Logistics is a corporation not a partnership. Furthermore, Wei’s International does not submit in accordance with CPLR 3215 (g) (4) (i) an affidavit that an additional service of the summons by first class mail has been made upon Unitex Logistics at its last known address at least twenty days before the entry of judgment.

Wherefore, it is hereby,

ORDERED and ADJUDGED that Plaintiff Wei’s International Trading Corp.’s motion pursuant to CPLR 3215 for a default judgment against Defendant Unitex Logistics USA, INC. d/b/a Unitex Intercontinental is denied.

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

DATED: May 23, 2017



EILEEN A. RAKOWER, J.S.C.