

**Michael G. Kessler & Assoc. Ltd. v Metropolitan
Transp. Auth.-N.Y. City Tr. Auth.**

2018 NY Slip Op 30175(U)

January 30, 2018

Supreme Court, New York County

Docket Number: 160245/2016

Judge: Kathryn E. Freed

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED
Justice

PART 2

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MICHAEL G. KESSLER & ASSOCIATES LTD. d/b/a KESSLER INTERNATIONAL,

INDEX NO. 160245/2016

Plaintiff,

MOTION DATE

- v -

MOTION SEQ. NO. 001

METROPOLITAN TRANSPORTATION AUTHORITY- NEW YORK CITY TRANSIT AUTHORITY and EATON ELECTRIC INC.,

DECISION AND ORDER

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number 20, 21, 22, 23, 24, 25 were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, it is ordered that the motion is granted.

In this action sounding in quantum meruit and an account stated, plaintiff Michael G. Kessler & Associates Ltd., d/b/a Kessler International seeks an order, pursuant to CPLR 3215(a), directing that a default judgment be entered in its favor as against defendant Eaton Electric Inc. (Eaton) due to said defendant's failure to answer or otherwise appear in this matter and, upon its default, directing that a judgment of \$74,460.76 be entered against Eaton, plus interest from July 18, 2016. After a review of the papers presented, as well as the relevant statutes and case law, the motion is granted without opposition.

Factual and Procedural Background:

This action was commenced by plaintiff against defendants Metropolitan Transportation Authority-New York City Transit Authority (NYCTA), and Eaton Electric Inc. (Eaton) on

December 7, 2016. Doc. 1.¹ In its verified complaint, plaintiff alleged that, on or about May 15, 2015, plaintiff and defendants entered into a written agreement pursuant to which plaintiff agreed to provide integrity monitoring services for defendants. Doc. 1. Plaintiff further asserted that defendants breached the agreement by failing to pay for services rendered by plaintiff. Doc. 1. Plaintiff alleged that, as of July 18, 2016, defendants owed it \$74,460.76. Doc. 1.

NYCTA thereafter joined issue by service of its verified answer. Doc. 6. By stipulation filed August 17, 2017, plaintiff agreed to dismiss its claims against NYCTA. Doc. 18.²

Plaintiff now moves, by notice of motion filed October 23, 2017, for a default judgment against Eaton pursuant to CPLR 3215(a). Plaintiff demanded that, upon Eaton's default, it was entitled to have a judgment of \$74,460.76 entered against defendant, plus interest from July 18, 2016.

In support of the motion, plaintiff submits, inter alia, an attorney affirmation (Doc. 21), the affidavit of plaintiff's Vice-President Susan Peterson (Doc. 22), the summons and verified complaint (Doc. 13), plaintiff's integrity monitoring agreements (Doc. 23), and bills submitted by plaintiff to NYCTA seeking payment from Eaton (Doc. 23). In support of the motion, plaintiff's counsel avers that, despite service of the verified complaint, Eaton failed to answer the same or otherwise appear in this action. Doc. 21.

Peterson represents in her affidavit in support of the motion that plaintiff provided corporate integrity monitoring, as well as forensic and investigative services for the period ending July 18, 2016. Doc. 22. The "integrity monitoring services agreement" between plaintiff and Eaton required plaintiff to provide integrity monitoring services pursuant to the terms of an integrity

¹ All references are to the documents filed with NYSCEF in this action.

² The stipulation of dismissal as against NYCTA reflected that NYCTA was incorrectly sued as "Metropolitan Transportation Authority-New York City Transit Authority." Doc. 18.

monitoring agreement between NYCTA and Eaton. Doc. 23. Pursuant to the terms of the agreement between plaintiff and Eaton, plaintiff submitted detailed monthly invoices to NYCTA for approval. Doc. 23. Following approval by NYCTA, the invoices were issued to Eaton authorizing payment to plaintiff. Doc. 22. According to Peterson, Eaton owes plaintiff a total of \$74,460.76, plus interest from July 18, 2016, as well as costs and disbursements. Doc. 22.

Plaintiff's Argument:

Plaintiff argues that it is entitled to a default judgment against Eaton because Eaton was properly served with process, failed to answer or otherwise appear in this action, and plaintiff's motion sets forth the facts constituting the claim against Eaton.

Conclusions of Law:

CPLR 3215 (a) provides, in pertinent part, that “[w]hen a defendant has failed to appear, plead or proceed to trial. . . , the plaintiff may seek a default judgment against him.” It is well settled that “[o]n a motion for leave to enter a default judgment pursuant to CPLR 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party’s default in answering or appearing.” *See Atlantic Cas. Ins. Co. v RJNJ Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011). Further, a default in answering the complaint is deemed to be an admission of all factual statements contained in the complaint and all reasonable inferences which flow from them. *See Woodson v Mendon Leasing Corp.*, 100 NY2d 62 (2003).

Here, plaintiff is entitled to a default against Eaton since it established proof of service of the summons and verified complaint on Eaton (Doc. 2), additional service of the summons and

complaint on Eaton pursuant to CPLR 3215(g)(4) (Doc. 23), Eaton's failure to answer or otherwise move against the verified complaint (Doc. 21, at par. 6), and the facts giving rise to the claim, as set forth in the verified complaint (Doc. 23) and the affidavit of Peterson (Doc. 75).

Therefore, in accordance with the foregoing, it is hereby:


ORDERED that the motion by plaintiff Michael G. Kessler & Associates Ltd., d/b/a Kessler International for a default judgment against defendant Eaton Electric Inc. is granted in the amount of \$74,460.76, plus interest at the statutory rate from July 18, 2016, as well as costs and disbursements; and it is further,

ORDERED that the Clerk is directed to enter a judgment in favor of plaintiff Michael G. Kessler & Associates Ltd., d/b/a Kessler International and against defendant Eaton Electric Inc. in the amount of \$74,460.76, plus interest at the statutory rate from July 18, 2016, as well as costs and disbursements; and it is further

ORDERED that plaintiff Michael G. Kessler & Associates Ltd., d/b/a Kessler International shall serve a copy of this order on defendant Eaton Electric Inc., and on the Trial Support Office at 60 Centre Street, Room 158; and it is further

ORDERED that this constitutes the decision and order of the court.

1/30/2018
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

DO NOT POST

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: