

**Dragone, LLC v Arnaldo Caprai Gruppo Tessile
S.R.L.**

2018 NY Slip Op 32619(U)

October 12, 2018

Supreme Court, New York County

Docket Number: 650563/2017

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2

Justice

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INDEX NO. 650563/2017

DRAGONE, LLC,

Plaintiff,

MOTION SEQ. NO. 001

- v -

ARNALDO CAPRAI GRUPPO TESSILE S.R.L., MAGLITAL S.R.L.,
and CRUCIANIC, LLC,

Defendants.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9
were read on this motion to/for DEFAULT JUDGMENT

Upon the foregoing documents, it is ordered that the motion is denied with leave to renew upon
proper papers.

Plaintiff Dragone, LLC ("Dragone") moves, pursuant to CPLR 3215, for a default
judgment against defendants Arnaldo Caprai Gruppo Tessile S.r.L. ("Arnaldo Caprai") and
CrucianiC, LLC ("CrucianiC"). After a review of the motion papers, as well as a review of the
relevant statutes and case law, the motion, which is unopposed, is denied with leave to renew
upon proper papers.

FACTUAL AND PROCEDURAL BACKGROUND:

Plaintiff Dragone commenced this action by filing a summons and complaint on January
7, 2016. (Doc. 5.) The complaint alleges the following: Dragone is a foreign limited liability
company authorized to do business in New York. (Id. at 4.) On January 1, 2014, plaintiff entered
into an agency agreement with Cruciani USA, LLC ("Cruciani USA"), a subsidiary of a foreign

limited liability company named Maglital S.R.L. (“Maglital”) which, in turn, is a subsidiary of Arnaldo Caprai, an Italian limited liability company. (*Id.* at 4–5.)

Under the agreement, plaintiff was to promote the sale of certain products within the United States and Canada. (*Id.* at 5.) In return, Cruciani USA agreed to pay plaintiff \$5,000 per month for two years, as well as fifteen percent of the total sales within the United States and Canada. (*Id.*) Although plaintiff purportedly sold \$440,295.00 worth of products, Cruciani USA failed to pay pursuant to the agreement. (*Id.*) Plaintiff then commenced an action styled *Dragone, LLC v Cruciani USA, LLC*, Supreme Court, New York County Index Number 654260/2015,¹ against Cruciani USA for breach of contract. By order dated September 9, 2016, this Court (Engoron, J.) granted a default judgment in plaintiff’s favor against Cruciani USA.²

The complaint in the instant action then alleges that Cruciani USA depleted its assets before plaintiff could collect on the judgment from the prior action. (*Id.*) Upon plaintiff’s information and belief, Arnaldo Caprai formed CrucianiC, a domestic limited liability company, in or about June of 2014 to replace Cruciani USA and avoid satisfying the liability to plaintiff. (*Id.*; *see also* Doc. 3 at 2.) Plaintiff in this action seeks to pierce the corporate veil against Arnaldo Caprai and Maglital and hold them liable for their alleged abuses of the corporate form (Doc. 5 at 5–7), and also seeks to hold CrucianiC accountable for Cruciani USA’s liability on the ground of successor liability (*id.* at 7–8).

Plaintiff now moves, pursuant to CPLR 3215, for a default judgment against Arnaldo Caprai and CrucianiC.³

¹ The documents for this action are available online at NYSCEF.

² This decision and order can be found in Document 11 filed with NYSCEF in *Dragone, LLC v Cruciani USA, LLC* (654260/2015).

³ Plaintiff is not moving for a default judgment against Maglital because “proof of service on Maglital has yet to be received” (Doc. 3 at 3) by plaintiff, who purportedly attempted to serve process pursuant to the Hague Convention (*id.*).

LEGAL CONCLUSIONS:

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.” (*Atl. Cas. Ins. Co. v R.J.N.J. Servs., Inc.*, 89 AD3d 649, 651 [2d Dept 2011].) Moreover, a default in answering the complaint is deemed to be an admission of all factual statements contained in the complaint and all reasonable inferences that flow from them. (*See Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003].)

Because Arnaldo Caprai is a foreign entity, plaintiff served process pursuant to the Hague Convention. (Docs. 3 at 3; 6.) Plaintiff served process on CrucianiC via the Secretary of State. (Doc. 6 at 1.) Both defendants did not answer the complaint and have not otherwise appeared in this action. (Doc. 3 at 3.) Therefore, plaintiff has satisfied two of the 3 requirements for a default judgment under CPLR 3215(a).

Nevertheless, this Court finds that plaintiff is not entitled to a default judgment against defendant Arnaldo Caprai because plaintiff has not established proof of the facts constituting the claim, i.e., that this Court should pierce the corporate veil to impose liability against Arnaldo Caprai. “[P]iercing the corporate veil requires a showing that: (1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff’s injury.” (*Ciavarella v Zagaglia*, 132 AD3d 608, 608–09 [1st Dept 2015].) Specifically, plaintiff has not

submitted any evidence establishing a relationship between Arnaldo Caprai and Cruciani USA. Without such evidence, this Court cannot determine whether Arnaldo Caprai exercised control over Cruciani USA or whether it even owned Cruciani USA at the time of its existence.

With respect to the cause of action against CrucianiC on the ground of successor liability, courts have held that, as a general rule, “a corporation which acquires the assets of another is not liable for the torts of its predecessor.” (*In re New York City Asbestos Litig.*, 15 AD3d 254, 255 [1st Dept 2005].) However, successor liability may be imposed where there is a “consolidation or merger of seller and purchaser.” (*Id.* at 255–256.) To meet this exception, four factors must be present:

(1) continuity of ownership; (2) cessation of ordinary business operations and the dissolution of the selling corporation as soon as possible after the transaction; (3) the buyer's assumption of the liabilities ordinarily necessary for the uninterrupted continuation of the seller's business; and (4) continuity of management, personnel, physical location, assets and general business operation.

(*Id.*)

This Court also finds that plaintiff is not entitled to a default judgment against defendant CrucianiC for failure to provide evidence of the facts constituting the claim. In regard to the first factor, for example, plaintiff asserts that Arnaldo Caprai owns defendant CrucianiC (Doc. 3 at 2), but has not offered any proof of that asserted ownership. It is therefore impossible for this Court to determine whether there was a continuity of ownership from Cruciani USA to defendant CrucianiC. On these facts, default judgment must be denied.

In accordance with the foregoing, it is hereby:

ORDERED that plaintiff Dragone, LLC's motion for a default judgment pursuant to CPLR 3215 against defendants Arnaldo Caprai Gruppo Tessile S.r.L. and CrucianiC, LLC is denied, with leave to renew upon proper papers within 30 days of service of this order with notice of entry; and it is further

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

10/12/2018
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE