

**215 W. 28th St. Prop. Owner LLC v IBK Constr.
Group LLC**

2021 NY Slip Op 30264(U)

January 27, 2021

Supreme Court, New York County

Docket Number: 652382/2020

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 48EFM

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<p>215 WEST 28TH STREET PROPERTY OWNER LLC, 225 WEST 28TH STREET PROPERTY OWNER LLC, HAP CONSTRUCTION LLC, AND, 213-227 WEST 28TH STREET LLC,</p> <p style="text-align: center;">Plaintiffs,</p>	<p>INDEX NO. <u>652382/2020</u></p> <p>MOTION DATE <u>12/18/2020</u></p> <p>MOTION SEQ. NO. <u>015</u></p>
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- v -

IBK CONSTRUCTION GROUP LLC, VLAD LYUBARSKY,
 PATRICK SINCHAK, DIMITRI SHUTOV, YEVGEN
 DOLOTOV, ALEXANDER TUKMANIAN, EASTERN
 HOISTING AND CRANE SERVICE INC., UNITED
 RENTALS INC., FERRARA LUMBER, CORP., US
 CONCRETE INC., PCI CONTRACTING INC.,
 REINFORCING SUPPLY LLC, NEW YORK CONCRETE
 CORP., HOWARD I. SHAPIRO ASSOCIATES
 CONSULTING ENGINEERS P.C., BARKER STEEL LLC,
 IRON WORK INC., TITAN FORMWORK SYSTEMS LLC,
 COLONY HARDWARE CORPORATION,
 SUPERSTRUCTURE SAFETY NETTING INC., DNV
 EQUIPMENT CORP., FELDMAN LUMBER US LBM LLC,
 HD SUPPLY CONSTRUCTION & INDUSTRIAL WHITE
 CAP, BOWNE TECH CONSTRUCTION CORP., NEW
 YORK CONCRETE WASHOUT SYSTEMS,
 INC., SUNBELT RENTALS, INC., JOHN DOE 1 THROUGH
 JOHN DOE 10,

Defendants.

**DECISION + ORDER ON
 MOTION**

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IBK CONSTRUCTION GROUP LLC

Plaintiff,

Third-Party
 Index No.

-against-

DAIWA HOUSE TEXAS, INC., 215-219 WEST 28TH STREET
 MAZAL OWNER LLC

Defendants.

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 015) 281, 282, 283, 284,
 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304,
 305

were read on this motion to/for

JUDGMENT - DEFAULT

In motion sequence number 015, plaintiffs move, pursuant to CPLR 3215, for a default judgment against defendants on plaintiffs' first cause of action (interpleader), Ferrara Lumber, Corp., Reinforcing Supply LLC, Greg's Iron Work Inc., Super Structure Safety Netting Inc., Bowne Tech Construction Corp. and Sunbelt Rentals, Inc. (collectively, Defaulting Defendants). Plaintiffs also seek an order directing the County Clerk to discharge the Defaulting Defendants' mechanics' liens. There is no opposition to this motion. The Defaulting Defendants have not answered the complaint.

"On a motion for a default judgment under CPLR 3215 based upon a failure to answer the complaint, a plaintiff demonstrates entitlement to a default judgment against a defendant by submitting: (1) proof of service of the summons and complaint; (2) proof of the facts constituting its claim; and (3) proof of the defendant's default in answering or appearing" (*Medina v Sheng Hui Realty LLC*, 2018 WL 2136441, *6-7 [Sup Ct, NY County 2018] [citations omitted]). "Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action. The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts" (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994] [citations omitted]).

Proof of Service

Plaintiffs have submitted proof that the Defaulting Defendants were served with the amended summons and complaint (NYSCEF Doc. Nos. [NYSCEF] 283-295, Affidavits of Service).

Proof of Facts

CPLR 3215 (f) requires a plaintiff to submit "proof of the facts constituting the claim, the default and the amount due by affidavit Where a verified complaint has been served, it may be used as the affidavit of the facts constituting the claim and the amount due; in such case, an affidavit as to the default shall be made by the party or the party's attorney."

In support of their motion, plaintiffs submit the affidavit of Stefano Braganti, Vice President of plaintiff HAP Construction LLC (HAP), the general contractor for the 213-227 West 28th Street LLC project (Project) (NYSCEF 296, Braganti aff ¶ 1; see also NYSCEF 4, Amended Complaint ¶ 35). Braganti affirms that he "served as the project executive for the construction of the [P]roject" (NYSCEF 296, Braganti aff ¶ 1). Braganti affirms that HAP paid defendant IBK Construction Group (IBK), subcontractor for the Project, in full through its date of termination for cause (*id.* ¶ 3; see also NYSCEF 4, Amended Complaint ¶¶ 38-39; 52). IBK retained the Defaulting Defendants as sub-subcontractors for the Project (NYSCEF 4, Amended Complaint ¶ 45). In February and March 2020, the Defaulting Defendants filed mechanics' liens against properties located at 215 and 225 W. 28th Street, NY, NY, owned by plaintiffs 215 West 28th Street

Property Owner LLC and 225 West 28th Street Property Owner LLC (NYSCEF 296, Braganti aff ¶¶ 6-11; NYSCEF 4, Amended Complaint ¶ 58).

Plaintiffs commenced this interpleader action against the Defaulting Defendants, alleging that (1) plaintiffs are stakeholders, (2) the Defaulting Defendants filed liens against properties owned by two of the plaintiffs (3) a dispute exists between the Defaulting Defendants and IBK, (4) plaintiffs cannot determine who monies owed rightfully belong to, and (5) plaintiffs cannot turn over these monies without this determination (NYSCEF 4, Amended Complaint ¶¶ 69-75). Plaintiffs seek to cancel and/or discharge each of the mechanics' liens filed by the Defaulting Defendants.

CPLR 1006 (a) provides that “[a] stakeholder is a person who is or may be exposed to multiple liability as the result of adverse claims. A claimant is a person who has made or may be expected to make such a claim. A stakeholder may commence an action of interpleader against two or more claimants.” Here, plaintiffs have submitted proof of facts to support their claim. Plaintiffs are stakeholders and the Defaulting Defendants are claimants.

Further, NY Lien Law § 44 (5) provides, in relevant part, that “[e]very defendant who is a lienor shall, by answer in the action, set forth his lien, or he will be deemed to have waived the same, unless the lien is admitted in the complaint, and not contested by another defendant.” Here, the Defaulting Defendants have failed to answer, the lien is not admitted in the complaint, and there is no evidence presented on this motion that another defendant contests (*see Interior Bldg. Servs., Inc. v Broadway 1384 LLC*, 73 AD3d 529, 529 [1st Dept 2010] [“mechanic’s liens filed by the subcontractors who have not appeared or answered should have also been discharged”]; *Naber Elec. Corp. v George A. Fuller Co., Inc.*, 62 AD3d 971 [2d Dep’t 2009]).

Proof of Default

Plaintiffs’ counsel affirms that the Defaulting Defendants have failed to answer the amended complaint (NYSCEF 312, Goldrich aff ¶ 30).

Accordingly, it is

ORDERED that plaintiffs’ motion is granted; and it is further

ORDERED that the Clerk of the Court is directed to discharge of record the mechanic’s liens filed by the Defaulting Defendants, as follows:

- i. The February 6, 2020 mechanic’s lien filed by Ferrara Lumber, Corp. against the property located at 225 West 28th Street, New York, New York 10001, in the County of New York, Block 778, Lot 25 in the amount of \$5,330.28;
- ii. The February 11, 2020 mechanic’s lien filed by Reinforcing Supply LLC against the premises known as 221/223/225/227 225 West 28th Street, New York, New

York 10001, in the County of New York, Block 778, Lots 25, 27 and 28 in the amount of \$9,635.43;

iii. The February 19, 2020 mechanic's lien filed by Greg's Iron Work Inc. against the property located at 215 West 28th Street, New York, New York 10001, in the County of New York, Block 778, Lot 31 in the amount of \$7,000;

iv. The February 28, 2020 mechanic's lien filed by Super Structure Safety Netting Inc. against the property located at 225 West 28th Street, New York, New York 10001, in the County of New York, Block 778, Lot 25 in the amount of \$92,000;

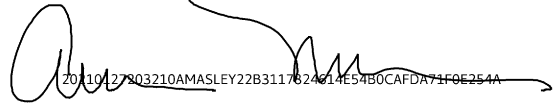
v. The March 18, 2020 mechanic's lien filed by Bowne Tech Construction Corp. against the property known as 215-219 West 28th Street, New York, New York 10001, in the County of New York, Block 778, Lot 31 in the amount of \$35,775;

vi. The March 18, 2020 mechanic's lien filed by Bowne Tech Construction Corp. against the property known as 221-225 West 28th Street, New York, New York 10001, in the County of New York, Block 778, Lots 25, 27, 28 and 31 in the amount of \$35,775; and

vii. The March 2, 2020 mechanic's lien filed by Sunbelt Rentals, Inc. against the property located at 215 West 28th Street, New York, New York 10001, in the County of New York, Block 778, Lot 31 in the amount of \$25,582.35.

And it is further

ORDERED that the Clerk of the Court enter judgment against Ferrara Lumber, Corp., Reinforcing Supply LLC, Greg's Iron Work Inc., Super Structure Safety Netting Inc., Bowne Tech Construction Corp., and Sunbelt Rentals, Inc. accordingly.


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1/27/2021
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: