

**Union Mut. Fire Ins. Co. v KJ Plumbing & Heating
Mech. Corp.**

2021 NY Slip Op 31617(U)

May 14, 2021

Supreme Court, New York County

Docket Number: 156513/2020

Judge: W. Franc Perry

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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. W. FRANC PERRY PART IAS MOTION 23EFM

Justice

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INDEX NO. 156513/2020

UNION MUTUAL FIRE INSURANCE COMPANY A/S/O 435
MUNDY LANE LLC

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 001

- v -

KJ PLUMBING & HEATING MECHANICAL CORP.,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10 were read on this motion to/for JUDGMENT - DEFAULT

In this property damage subrogation action, Plaintiff Union Mutual Fire Insurance Company ("Plaintiff") seeks to recover \$37,570.56 in damages from Defendant KJ Plumbing & Heating Mechanical Corp. ("Defendant"), paid by Plaintiff to its insured, 435 Munday Lane LLC ("Mundy"), for fire damage to Mundy's building located at 435 Mundy Lane (the "building"). In motion sequence 001, Plaintiff moves for default judgment. The motion has been submitted unopposed.

Background

Plaintiff alleges that Defendant was hired to perform plumbing work in the basement of the building, which contains two rental apartment units. Plaintiff alleges that while performing the plumbing work (specifically soldering) on March 5, 2020, Defendant caused a fire to erupt, damaging Mundy in the amount of \$37,570.56. (NYSCEF Doc No. 1, Complaint, at ¶¶ 7-8.) Plaintiff paid Mundy \$36,355.56, representing the total damages minus a deductible of \$1,215.00 paid by Mundy. (*Id.* at ¶¶ 10-12.) Plaintiff commenced this action on August 18, 2020 and now moves for default judgment.

Discussion

On a motion for leave to enter a default judgment, "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]; *see also SMROF II 2012-I Tr. v Tella*, 139 AD3d 599 [1st Dept 2016].) "Given that in default proceedings the defendant has failed to appear and the plaintiff does not have the benefit of discovery, the affidavit or verified complaint need only allege enough facts to enable a court to determine that a viable cause of action exists." (*Bianchi v Empire City Subway Co.*, 2016 WL 1083912 [Sup Ct, NY County 2016], quoting *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70-71 [2003].)

"A subrogation action such as the instant matter 'allows an insurer to stand in the shoes of its insured and seek indemnification from third parties whose wrongdoing has caused a loss for which the insurer is bound to reimburse.'" (*Utica First Ins. Co. v The Vollrath Co., LLC*, 2019 WL 587437, at *1 [Sup Ct, NY County 2019], quoting *Kaf-Kaf, Inc. v Rodless Decorations*, 90 NY2d 654, 660 [1997]). "To succeed on [a motion for default judgment in a] subrogation action, the plaintiff must demonstrate that it paid out on its subrogor's property damage claim, and that the defendant's negligence caused or contributed to the subrogor's loss." (*Continental Cas. Co. v Ball Const., L.P.*, 2018 WL 557524, at *1 [Sup Ct, NY County 2018], citing *Footlocker, Inc. v KK&J, LLC*, 69 AD3d 481 [1st Dept 2010].)

Here, Plaintiff submits two affidavits of service demonstrating that Defendant was properly served on September 15, 2020, pursuant to § 306 of the Business Corporation Law, and again on November 10, 2020, in compliance with CPLR 3215 [g] [4]. (NYSCEF Doc Nos. 6 and 7.) Despite proper service, Defendant has failed to appear.

In support of its motion, Plaintiff submits the sworn affidavit of Richard Desimone, an insurance adjuster at Alpine Adjustment & Investigations, Inc. (“Alpine”), which was retained by Plaintiff to adjust and investigate Mundy’s insurance claim. (NYSCEF Doc No. 8 at 2-3.) Mr. Desimone avers that the “claim originated from defendant’s negligence in causing a fire to erupt in the building, as a result of its improper use of soldering equipment . . . [and that the total loss] as a result of the claim is \$37,570.56.” (*Id.* at ¶¶ 7, 9.) That figure is reflected in the Plaintiff’s sworn statement of loss. (NYSCEF Doc No. 9.)

Plaintiff also submits the loss report of Alpine, prepared by Mr. Desimone, which forms the basis for his sworn affidavit. The report indicates that Mr. Desimone personally inspected the building and concluded that the fire started in the basement near the area where Defendant was performing soldering work, and that the fire spread to the ceiling beams, eventually burning through the ceiling and into the ground floor. (NYSCEF Doc No. 8 at 5-6.) Alpine also notes that it retained TJ Russo Consultants, who interviewed the incident commander of the Mount Vernon Fire Department who stated an opinion that the fire was caused by the plumbing work. (*Id.*) TJ Russo Consultants concluded that the soldering work was performed in an area where there was “NO electrical fixtures or wiring” and “NO other potential sources of ignition.” (*Id.*) The report also contains 66 photographs of the premises taken within the week of the incident. (*Id.* at 9-75.) Accordingly, Plaintiff has thus established its entitlement to default judgment, and it is hereby

ORDERED that the motion by Plaintiff, Union Mutual Fire Insurance Company, as subrogee of 435 Mundy Lane LLC, for a default judgment against Defendant KJ Plumbing & Heating Mechanical Corporation, is granted; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Plaintiff in the amount of \$37,570.56, plus costs and statutory interest from March 5, 2020 as taxed by the Clerk.

05/14/21

DATE



W. FRANC PERRY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE