

A.F. Supply Corp. v 169 CH9 Owner, LLC
2021 NY Slip Op 32521(U)
November 30, 2021
Supreme Court, New York County
Docket Number: Index No. 651727/2020
Judge: Frank P. Nervo
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. FRANK NERVO PART 04

Justice

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A.F. SUPPLY CORP.,

Plaintiff,

- v -

169 CH9 OWNER, LLC, 169 CH9 HOLDINGS, LLC, 169 CH9 DEVELOPER, LLC, TO TRAP A BUTTERFLY, LLC, DDG DEVELOPMENT, LLC, DDG PARTNERS, LLC, DDG DESIGN, LLC, DDG PROPERTY MANAGEMENT, LLC, DONALD LAUDAU, WESTBROOK REAL ESTATE FUND IX, L.P., WESTBROOK REALTY MANAGEMENT IX, L.P., WRM IX GP, L.L.C., BROOKHOUSE USA, LLC, D/B/A WESTBROOK PROPERTIES, SUNBROOK PARTNERS, INC., D/B/A WESTBROOK PROPERTIES, SUNBROOK PARTNERS, LLC, D/B/A WESTBROOK PROPERTIES, WESTCHESTER FIRE INSURANCE COMPANY

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38

were read on this motion to/for JUDGMENT - DEFAULT.

This matter was recently transferred to Part IV.

Plaintiff moves for default judgment against defendants DDG Development, DDG Partners, DDG Design, and DDG Property Management (hereinafter "DDG"). The motion is unopposed.

CPLR § 3215(a) provides that a plaintiff may obtain a default judgment when a defendant has failed to appear or plead. The plaintiff must provide

proof of service of the summons and complaint, proof of the underlying facts constituting the claim, and proof of default (CPLR § 3215(f); *see also SRMOF II 2012-I Trust v. Tella*, 139 AD3d 599 [1st Dept 2016]; *Green Tree Servicing, LLC v. Cary*, 106 AD3d 691, 692 [2d Dept 2013]). Where a default judgment is sought against a corporation, the plaintiff must also demonstrate service on the corporate-defendant via mail at its last known address (CPLR § 3215[g][4]).

Plaintiff seeks a default judgment in the amount of \$63,990.18 with interest from August 5, 2019, related to construction goods delivered by plaintiff to DDG, which remain unpaid. Plaintiff has provided proof of the underlying claim (NYSCEF Doc. No. 30) and proof of the requisite service (NYSCEF Doc. Nos. 12-16 & 32).

To the extent that plaintiff seeks attorney's fees in a set amount of 20 percent of the sum collected in this action, the Court will not so award. The award of attorney's fees must be reasonable and, as such, and the creditor cannot recover from the debtor on such a contractual provision until the creditor has incurred the attorney's fee; the award remains subject to review of the Court (*see e.g. Mead v. First Trust & Deposit Co.*, 60 AD2d 71 [4th Dept 1977]).

Accordingly, it is

ORDERED that plaintiff shall have default judgment in the amount of \$63,990.18 as against DDG Development, DDG Partners, DDG Design, and DDG Property Management, plus interest at the statutory rate as calculated by the Clerk of the Court from August 5, 2019; and it is further

ORDERED that the portion of the motion seeking attorney's fees is severed and shall proceed to inquest before this Court on March 17, 2022 at 3:00pm via Microsoft Teams; and it is further


ORDERED that plaintiff shall provide a courtesy copy of all exhibits intended to be introduced at the inquest, including a detailed recitation of the hours expended and fees earned in connection with this application, to SFC-Part4-Clerk@nycourts.gov by March 11, 2022; and it is further

ORDERED that should the parties reach agreement regarding plaintiff's attorney's fees and costs, they shall file a stipulation of same via NYSCEF on or before March 11, 2022.; and it is further

ORDERED that the above inquest will not be adjourned after March 11, 2022, absent further order of the Court; and it is further

ORDERED that any requested relief not addressed herein has nevertheless been considered and is hereby denied.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

11/30/2021		
DATE		FRANK NERVO, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE