

**Consolidated Edison Co. of N.Y., Inc. v Mom Constr.
LLC**

2022 NY Slip Op 32760(U)

August 16, 2022

Supreme Court, New York County

Docket Number: Index No. 158343/2020

Judge: William 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. WILLIAM PERRY PART 23

Justice

-----X

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,

Plaintiff,

- v -

MOM CONSTRUCTION LLC, MERLIN ALEIDES ORDONEZ MONDRAGON

Defendant.

-----X

INDEX NO. 158343/2020

MOTION DATE 1/04/2022

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32

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

In this action for property damage allegedly caused by a motor vehicle owned by defendant Mom Construction LLC (Mom) and operated by Merlin Aleides Ordonez Mondragon (Mondragon), plaintiff Consolidated Edison Company of New York, Inc. (Con Ed) moves for default judgment against defendant Mondragon.1 This motion is submitted unopposed.

By decision and order dated November 17, 2021, this court previously denied plaintiff's timely prior unopposed motion for default judgment against both defendants. With respect to defendant Mondragon, the court found that plaintiff failed to submit an affidavit of non-military service based on an investigation conducted no more than 30 days prior to the motion.

Plaintiff's instant motion, brought shortly after this court's prior decision and motion, submits the affidavit of non-military service based on an investigation conducted no more than

1 To the extent, if at all, there is a question regarding the timeliness of this motion, the court finds, under the procedural history and circumstances herein, that sufficient cause exists to determine this motion on the merits.

30 days of this motion (NYSCEF Doc. No 31).² Plaintiff also submits counsel's affirmation with exhibits (Docs 23 - 31), including the summons and complaint (verified by counsel) (Doc 25), affidavits of service of the summons and complaint (Doc 26) and of this motion (Doc 32), a default letter (Doc 27), a certified copy of the police accident report (Doc 29), and an affidavit of merit with supporting documentation (Doc 28).

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]). A defendant who has defaulted is "deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them" (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). "Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action, but the standard of proof is minimal" (*Petty v Law Office of Robert P. Santoriella, P.C.*, 200 AD3d 621, 621 [1st Dept 2021] [internal citation and quotation marks omitted]).

To demonstrate proper service pursuant to CPLR 308(2)], Con Ed submits an affidavit of service upon Mondragon (Doc 26). The affidavit indicates that on November 11, 2020, a process server served the summons and complaint upon a person of suitable age and discretion, identified as Mondragon's roommate and co-resident. The affidavit of service further indicates that on November 11, 2020, the process server mailed a copy of the summons and complaint in an

² The court notes that the name appearing in the non-military affidavit is shown as Merlin Aleides Ordonez-Mondragon. The affidavit states that the affiant accessed the website of the Department of Defense Manpower Data Center (DMDC), provided defendant's name, social security number (ssn) and/or date of birth (dob), and the ssn and/or dob was in fact that of defendant. The affidavit attests that according to DMDC's records, defendant is not in the military service.

envelope bearing the legend “personal and confidential” and not indicating on the outside that the communication was from an attorney or concerned an action against the person to be served.

Counsel’s affirmation sets forth, *inter alia*, proof of Mondragon’s default (Doc 23).

The summons and complaint dated October 8, 2020 asserts, as the first cause of action, a negligence claim. Con Ed alleges that on or about April 22, 2018, the motor vehicle operated by Mondragon “came in contact with plaintiff’s real, personal, and/or commercial property located at or near 49 Upper Croton Avenue, Town of Ossining, County of Westchester, State of New York (‘subject location’), causing damage thereto and necessitating the repair and/or replacement thereof” (Doc 25, ¶ 18). Con Ed further alleges that as a direct and proximate result thereof, it sustained damages in the amount of \$12,160.47. The certified police accident report states that on April 22, 2018, the vehicle’s operator,³ “struck utility pole traveling west on Upper Croton Avenue, then proceeded driving before coming to a stop front lawn of 16 Iroquois Road” (Doc 29). The report states that public property was damaged.

The affidavit of merit states that it is by an authorized individual, employed by Con Ed as an Engineering Supervisor, with personal knowledge of the facts derived from records maintained by Con Ed and prepared in the regular course of business at or near the time of the transactions, occurrences, or events, as was Con Ed’s usual custom and practice (NYSCEF Doc 28). The affidavit attaches a claim center statement (statement) which, under the category of damages to Con Ed’s facilities, lists the: location as 45 Upper Croton Ave., Ossining, NY, 10562; the date of loss as 4/22/2018; and, the description as “vehicle hit pole” (*id.*). The statement, dated December 17, 2018, addressed to MOM and indicating that payment was due upon receipt, provided a breakdown of damages. The total amount was listed as \$12,160.47,

³ The police accident report names the vehicle’s operator as “Ordonez-Mondrago, Merlin A”.

consisting of repair expense in the amount of \$1570.51, labor in the amount of \$9,787.50, and material in the amount of \$802.46.

Additionally, the affidavit of merit attaches a document labeled as a damage claim estimate detail. That document lists the type of damage and cause as “pole hit by car and it is snapped in half” and a description of the services as “installed 45ft class1 pole and transferred attachments” (Doc 28). The billing order time voucher is also attached, and it lists the employees’ names and hours worked, and the company truck types. Also attached is a document labeled trouble ticket details, which provides the dispatched date of April 22, 2018, the trouble type as pole hit, and the address as 45 Upper Croton Avenue. The affidavit also attached the police accident report and a report from the Ossining Fire Department (OFD). The OFD report provided that: on April 22, 2018 OFD was dispatched to the area of 49 Upper Croton Avenue on a report of a power line down; en route the Ossining Police Department (OPD) updated OFD personnel that a utility pole was down due to a motor vehicle accident; and, that OPD notified Con Ed about the downed utility pole.

Based upon the foregoing, plaintiff’s motion for a default judgment against defendant Merlin Aleides Ordonez Mondragon for a money judgment against Mondragon in the amount of \$12,160.47, is granted.

Accordingly, it is

ORDERED that plaintiff Consolidated Edison Company of New York’s motion sequence number 002 for a default judgment against defendant Merlin Aleides Ordonez Mondragon is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff Consolidated Edison Company of New York and against defendant Merlin Aleides Ordonez

Mondragon only in the amount of \$12,160.47, together with costs and disbursements as taxed by the Clerk of the Court; and it is further

ORDERED that as plaintiff has not renewed its default motion against defendant Mom Construction LLC that remaining action is dismissed as abandoned; and it is further

ORDERED that plaintiff, within 20 days of the posting of this decision and order on NYSCEF, shall serve a copy of this decision and order with notice of its entry upon defendants and upon the office of the County Clerk, which shall enter judgment accordingly; and it is further

ORDERED that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

8/16/2022
DATE


WILLIAM PERRY, 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

APPLICATION:

CHECK IF APPROPRIATE: