

Pine Val. Dev. Inc. v Integra Holdings LLC

2023 NY Slip Op 33879(U)

October 28, 2023

Supreme Court, New York County

Docket Number: Index No. 652189/2023

Judge: Andrea Masley

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

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PINE VALLEY DEVELOPMENT INC.,	INDEX NO.	<u>652189/2023</u>
Plaintiff,	MOTION DATE	<u> </u>
- v -	MOTION SEQ. NO.	<u>001</u>
INTEGRA HOLDINGS LLC and INTENSIVE CARE SPA,		
Defendants.		

**DECISION + ORDER ON
MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 13, 14, 15, 16, 17

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

Upon the foregoing documents, it is

In motion seq. no. 001, plaintiff Pine Valley Development Inc. (Pine Valley) moves, pursuant to CPLR 3215 (a), for a default judgment against defendant Integra Holdings LLC (Integra). The motion is unopposed.

“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

Plaintiff has submitted proof that Integra was served with summons, complaint and notice of electronic filing. (NYSCEF 3, aff of service.) Plaintiff also complied with the additional service requirements of CPLR 3215 (g)(4)(i). (NYSCEF 9, Horakova aff of additional notice.)

Proof of Claim

In its complaint, plaintiff asserts a claim for breach of the Patent Purchase Agreement executed between plaintiff and Integra (first cause of action); the only claim alleged against Integra. (NYSCEF 7, Complaint.)

CPLR 3215 (f) requires a plaintiff to submit “proof of the facts constituting the claim, the default and the amount due ... by affidavit made by the party.” “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’s attorney.” (CPLR 3215 [f].) In the absence of a verified complaint, plaintiff submits the affidavit of Mario Gazzola, plaintiff’s president in support of this motion. (NYSCEF 10, Gazzola aff ¶ 1.) Gazzola states that plaintiff entered into the Patent Purchase Agreement with Integra, with the Patent Purchase Agreement being part of series of contracts under an umbrella master agreement dated April 21, 2020 (Master Agreement). (*Id.* ¶ 6.)

Under the Master Agreement, nonparty Minskel Corp. (Minskel), a company which shares common management and ownership with plaintiff, agreed to subscribe to 1.2% of Intensive’s authorized shares for \$1,200,000.00. (NYSCEF 7, Complaint ¶¶ 7, 11; NYSCEF 2, Master Agreement.) The Master Agreement’s purpose was to provide

funding for Intensive's initial public offering (IPO) on the Luxembourg Stock Exchange. (*Id.* ¶ 9.) The Patent Purchase Agreement required that Minskel's investment be secured by the transfer of certain medical patents (Patents) by Integra to plaintiff for a nominal value of \$1.00. (*Id.* ¶ 13; NYSCEF 10, Gazzola aff ¶ 6.) Integra represented to plaintiff that it owned the Patents and had the authority to transfer them. (*Id.* ¶ 14; NYSCEF 2, Master Agreement [Exhibit B- Patent Purchase Agreement § § 6.1-6.2].) If its IPO was successful, Intensive was obligated to purchase the Patents from plaintiff for \$2,400,000, and if the IPO was unsuccessful, Intensive was obligated to purchase the Patents from plaintiff for \$1,272,000. (NYSCEF 7, Complaint ¶¶ 15-16; NYSCEF 10, Gazzola aff ¶ 6.) The IPO was successfully completed on May 15, 2020, when Intensive was listed on the Luxembourg Stock Exchange. (NYSCEF 7, Complaint ¶¶ 22-23; NYSCEF 10, Gazzola aff ¶ 6.) However, Integra never transferred the Patents to plaintiff as it did not own all the Patents. (NYSCEF 7, Complaint ¶¶ 27-29; NYSCEF 10, Gazzola aff ¶ 6.) Plaintiff claims that this was a breach of the Patent Purchase Agreement, including the warranties in Section 6. (NYSCEF 7, Complaint ¶¶ 41-45; NYSCEF 10, Gazzola aff ¶ 6.) Plaintiff claims that it suffered damages amounting to \$2,400,000, the amount it would have received if it were able to sell the Patents to Intensive upon successful completion of the IPO. (NYSCEF 10, Gazzola aff ¶ 6.)

Gazzola's affidavit, the complaint, and the accompanying exhibits (Master Agreement and Patent Purchase Agreement) present sufficient proof of facts constituting the claim and the amount due as required by CPLR 3215 (f).

Proof of Default

Integra has not answered plaintiff's summons and complaint or otherwise appeared in the litigation. (NYSCEF 6, Horakova aff ¶¶ 5.) More than 20 days have passed since plaintiff served Integra with the summons and complaint and the additional notice as required by CPLR 3215. (*Id.* ¶¶ 5, 7.)

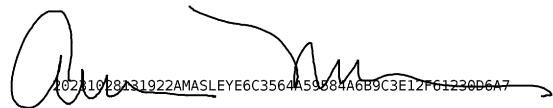
Accordingly, it is

ORDERED that plaintiff's motion for a default judgment against Integra Holdings LLC is granted; and it is further

ORDERED that judgment be entered in favor of plaintiff Pine Valley Development Inc., and against defendant Integra Holdings LLC, for the damages in the principal sum of \$2,400,000 plus pre-judgment interest at the statutory rate of 9% from May 16, 2020 through the date of the judgment as taxed by the Clerk of Court in the amount of \$ _____, plus costs and disbursements in the amount of \$ _____, for a total sum of \$ _____; and it is further

ORDERED that plaintiff Pine Valley Development Inc. shall have immediate execution; and it is further

ORDERED that the second cause of action against defendant Intensive Care SPA shall be severed and continued as to that defendant.


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10/28/2023
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
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					REFERENCE