

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JANICE A. TAYLOR IAS Part 15  
Justice

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NORTH SHORE PLUMBING SUPPLY CO. INC.,

Plaintiff(s),

Index No.:706086/16

Motion Date:3/7/18

- and -

Motion Cal. No.: 115

Motion Seq. No: 1

EMPIRE STATE PLUMBING & HEATING CORP.,  
And JOSEPH LACERTOSA,

Defendant(s).

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The following papers numbered 1 - 10 read on this motion by the plaintiff for an order granting summary judgment.

	<u>Papers Numbered</u>
Notice of Motion-Affirmation-Exhibits-Service.....	1 - 4
Affirmation in Opposition-Exhibits-Service.....	5 - 7
Reply Affidavit-Exhibits-Service.....	8 - 10

Upon the foregoing papers it is **ORDERED** that the motion is decided as follows:

This is an action for breach of contract. In its complaint, plaintiff alleges that the defendant Empire State Plumbing & Heating Corp. ("Empire") contracted to pay for goods provided, that Empire failed to pay the amount due pursuant to the contract and that defendant Joseph Lacertosa ("Lacertosa") guaranteed the contract between the parties.

This action was commenced on or about May 23, 2016 by the electronic filing of a summons and complaint. Plaintiff now moves, pursuant to CPLR §3212, for an order granting summary judgment. It is well-settled that the proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case. (See *Zuckerman v. City of*

New York, 49 N.Y.2d 557, 562 [1980]; *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 404 [1957]). Failure to make such a showing requires denial of the motion.

CPLR §3212(b) requires that for a court to grant summary judgment the court must determine if the movant's papers justify holding as a matter of law, "that the cause of action or defense has no merit." The evidence submitted in support of the movant must be viewed in the light most favorable to the non-movant (see, *Grivas v. Grivas*, 113 A.D.2d 264, 269 [2d Dept. 1985]; *Airco Alloys Division, Airco Inc. v. Niagara Mohawk Power Corp.*, 76 A.D.2d 68 [4th Dept. 1980]; *Parvi v. Kingston*, 41 N.Y.2d 553, 557 [1977]).

A review of the instant motion reveals that material issues of fact remain as to the prospective liability of the defendants and the amount due to the plaintiff. In opposition to the instant motion, defendant Lacertosa submits his own affidavit wherein he states that he never signed a Guaranty with the plaintiff. Summary judgment shall be granted only when there are no issues of material fact and the evidence requires the court to direct judgment in favor of the movant as a matter of law (see, *Friends of Animals, Inc., v. Associated Fur Mfrs.*, 46 N.Y.2d 1065 [1979]; *Orwell Bldg. Corp. v. Bessaha*, 5 A.D.3d 573 [2d Dept. 2003]). Accordingly, the instant application for summary judgment is hereby denied.

Dated: July 5, 2018

  
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JANICE A. TAYLOR, J.S.C.

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