

<b>At Last Sportswear, Inc. v North Am. Textile, Co., LLC</b>
2016 NY Slip Op 31492(U)
August 3, 2016
Supreme Court, New York County
Docket Number: 651781/2013
Judge: Eileen Bransten
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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AT LAST SPORTSWEAR, INC.,

Plaintiff,

-against-

Index No. 651781/2013  
Motion Seq. No. 007  
Motion Date: 7/19/2016

NORTH AMERICAN TEXTILE, CO., LLC  
NATCO PACKAGING BANGLADESH, LTD.,  
NATCO ASIA LIMITED, FORTUNEX, INC., and  
FORTUNEX LIMITED,

Defendants.  
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**BRANSTEN, J.**

Plaintiff, At Last Sportswear, Inc. ("At Last") brings this unopposed motion for a default judgment against Defendant Fortunex Limited. In its Amended Complaint, At Last asserts claims against Fortunex Limited for breach of contract and negligence.<sup>1</sup> In addition, At Last seeks to pierce the corporate veil. For the following reasons, Plaintiff's motion for default judgment is granted as to liability, and the matter is referred to a Special Referee for an inquest.

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<sup>1</sup> Defendant Fortunex Inc. is the only remaining Defendant in this action.

**I. Background<sup>2</sup>**

The instant dispute arises from a production agreement between At Last and Defendant Fortunex Limited, under which Defendant agreed to produce approximately 260,000 girls' shirts in its Bangladesh factor to fulfill a July 2010 order received by At Last from Wal-Mart. With At Last's consent, Fortunex subcontracted with North American Textile Company ("NATCO"), a Wal-Mart approved label supplier, for its manufacture of all interior labels. In total, NATCO produced 273,363 labels for the shirts.

When Fortunex received these labels, it incorporated them into the shirts, which were delivered to Wal-Mart around December 2010. On July 5, 2011, Wal-Mart discovered that the labels contained an excessive amount of lead and subsequently removed 25,252 of the unsold shirts and returned them to Plaintiff. Wal-Mart charged Plaintiff for the costs associated with returning the merchandise and the purchase price of the shirts. As a result, Plaintiff alleges that it suffered monetary damages in the amount of \$211,336.83. On May 17, 2013, Plaintiff filed the instant suit.

**II. Discussion**

At Last now seeks a default judgment as to Fortunex Limited, stemming from Fortunex Limited's failure to respond to the Amended Complaint.

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<sup>2</sup> All facts cited in this section are drawn from the Amended Complaint unless otherwise noted.

Under CPLR § 3215(a), “[w]hen a defendant has failed to appear, plead or proceed to trial of an action reached and called for trial... the plaintiff may seek a default judgment against him.” In order for default judgment to be granted, the moving party shall file proof of service of the summons and the complaint, as well as proof by affidavit of the facts constituting the claim, the default, and the amount due. *See* CPLR § 3215(f).

Plaintiff has satisfied the first requirement for default judgment by submitting proof of service of the service of the summons and complaint. *See* Wagh Aff. Ex. 7 (describing steps taken to serve the supplemental summons and amended complaint on Fortunex Ltd.).

Next, At Last submits proof of the facts constituting the claim through its submission of the Affidavit of Sandeep Wagh and the Verified Complaint. *See* Wagh Aff. ¶¶ 3-5 & Ex. H; *see also* *Woodson v. Mendon Leasing Corp.*, 100 N.Y.2d 62, 70-71 (2003) (“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... Indeed, defaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them.”) In addition, attorney Catania Facher, Esq. attests that Fortunex Limited has failed to interpose an answer or otherwise respond to the Amended Complaint. *See* Facher Affirm. ¶ 7.

Nevertheless, At Last has failed to substantiate the amount of damages sought. When a defendant defaults on the action, it is deemed to have “admitted all traversable

allegations in the complaint, including the basic allegation of liability, but does not admit the plaintiff's conclusion as to damages." *Brown v. Rosedale Nurseries, Inc.*, 259 A.D.2d 256, 257 (1st Dep't 1999); *see also Amusement Bus. Underwriters v. Am. Int'l Group, Inc.*, 66 N.Y.2d 878, 880 (1985) (stating that defaulting defendant who admits all traversable allegations in complaint does not admit plaintiff's conclusion of damages and may, at damages inquest, offer proof in mitigation of damages involving circumstances intrinsic to transactions at issue in complaint). Here, since Plaintiff has not attached evidence substantiating the amount of damages that it alleges against Defendant Fortunex, a damages inquest is thus necessary to calculate the amount of damages that Defendant Fortunex Limited owes Plaintiff.

### III. Conclusion

For the foregoing reasons, it is

ORDERED that Plaintiff At Last Sportswear, Inc.'s motion for default judgment against Defendant Fortunex Limited is granted; and it is further

ORDERED that an assessment of damages against Defendant Fortunex Limited is directed; and it is further

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to hear and report the amount of monetary damages due to Plaintiff At Last Sportswear, Inc.; and it is further

ORDERED that the powers of the JHO/Special Referee to hear and report shall not be limited further than as set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119 M, 646-386-3028 or [spref@courts.state.ny.us](mailto:spref@courts.state.ny.us)) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this Court at [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh) at the "Local Rules" link), shall assign this matter to an available Special Referee to determine as specified above; and it is further

ORDERED that plaintiffs' counsel shall serve a copy of this order with notice of entry on defendant and that counsel for plaintiffs shall, after thirty days from service of those papers, submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (which can be accessed at <http://www.nycourts.gov/courts/ljd/supctmanh/refpart-infosheet-10-09.pdf>) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4318) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and that the parties shall appear for the reference hearing, including with all such witnesses and evidence as they may seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk

subject only to any adjournment that may be authorized by the Special Referee's Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue specified above shall proceed from day to day until completion.

Dated: New York, New York

~~July~~ 2016

August 3, 2016

ENTER



Hon. Eileen Bransten, J.S.C.