



Ontario County Clerk Recording Page

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ARIEL BOUSKILA
80 Broad St
Suite 3303
New York, NY 10004

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Ontario County Clerk
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Canandaigua, New York 14424
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Document Type: **SUMMONS + COMPLAINT**

Receipt Number: 621653

Plaintiff

NEWCO CAPITAL GROUP VI LLC

Defendant

DARWIN EVOLUTION CONSTRUCTION
INC

Fees

Total Fees Paid: \$0.00

Control #: 202207130204
Index #: 133286-2022

State of New York
County of Ontario

EFiling through NYSCEF with a total page count of
10.

Ontario County Clerk

This sheet constitutes the Clerk's endorsement required by section 319 of the Real Property Law of the State of New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONTARIO

NEWCO CAPITAL GROUP VI LLC

Plaintiff

-against-

DARWIN EVOLUTION CONSTRUCTION INC D/B/A
D.E.C. RESTORATIONS ; D.E.C. RESTORATIONS -
CHARLOTTE ; D.E.C. RESTORATIONS - DURHAM ;
D.E.C. RESTORATIONS - NORCROSS ; DEC
RESTORATIONS ; D.E.C RESTORATIONS ;
SKY HOMES, LLC ; STONE CONCRETE,INC and
CONO DARWIN GUTIERREZ

Defendants

Index No.:

Date Purchased

SUMMONS

Plaintiff address is
1 Whitehall Street, Suite 200
New York, New York 10004

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiff attorney, at the address stated below, an answer to the attached complaint. If this summons was personally delivered upon you in the State of New York, the answer must be served within twenty days after such service of the summons, excluding the date of service. If the summons was not personally delivered to you within the State of New York, the answer must be served within thirty days after service of the summons is complete as provided by law.

If you do not serve an answer to the attached complaint within the applicable time limitation stated above, a judgment may be entered against you, by default, for the relief demanded in the complaint, without further notice to you.

The basis for venue is pursuant to the Contract entered into between the parties.

Dated: New York, New York
July 13, 2022

/s/ariel bouskila

Ariel Bouskila, Esq.
Berkovitch & Bouskila, PLLC
Attorneys for Plaintiff
80 Broad St Suite 3303
New York, New York 10004
Phone:(212)729-1477
Fax:(347)342-3192

Defendants to be served:

DARWIN EVOLUTION
CONSTRUCTION INC D/B/A D.E.C.
RESTORATIONS ; D.E.C.
RESTORATIONS - CHARLOTTE ;
D.E.C. RESTORATIONS - DURHAM ;
D.E.C. RESTORATIONS - NORCROSS ;
DEC RESTORATIONS ; D.E.C
RESTORATIONS ;
SKY HOMES, LLC ; STONE
CONCRETE, INC
4801 E INDEPENDENCE BLVD #610
CHARLOTTE, NC 28212

CONO DARWIN GUTIERREZ
1002 WILDER ST
CAMDEN, SC 29020

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONTARIO

NEWCO CAPITAL GROUP VI LLC

Index No.:

Plaintiff,

-against-

**VERIFIED
COMPLAINT**

DARWIN EVOLUTION CONSTRUCTION INC D/B/A D.E.C.
RESTORATIONS ; D.E.C. RESTORATIONS - CHARLOTTE ;
D.E.C. RESTORATIONS - DURHAM ; D.E.C. RESTORATIONS
- NORCROSS ; DEC RESTORATIONS ; D.E.C RESTORATIONS
; SKY HOMES, LLC ; STONE CONCRETE,INC and
CONO DARWIN GUTIERREZ

Defendants

Plaintiff NEWCO CAPITAL GROUP VI LLC ("Plaintiff"), by its attorney, Ariel Bouskila Esq., for its complaint herein against DARWIN EVOLUTION CONSTRUCTION INC D/B/A D.E.C. RESTORATIONS ; D.E.C. RESTORATIONS - CHARLOTTE ; D.E.C. RESTORATIONS - DURHAM ; D.E.C. RESTORATIONS - NORCROSS ; DEC RESTORATIONS ; D.E.C RESTORATIONS ; SKY HOMES, LLC ; STONE CONCRETE,INC (referred to collectively as "Company Defendant") and CONO DARWIN GUTIERREZ ("Guarantor(s)") (Company Defendant and Guarantor(s) collectively "Defendants"), alleges as follows:

The Parties

1. At all relevant times, Plaintiff was and is an entity authorized to do business in the State of New York, with its principal place of business in the State of New York.
2. Upon information and belief, at all relevant times, Company Defendant was and is a company organized and existing under the laws of the State of NC.
3. Upon information and belief, at all relevant times, Guarantor(s) were and are an individual residing in the State of NC.

4. Venue is proper in Ontario pursuant to the Agreements entered into by and between the parties.

5. This Court maintains personal jurisdiction over the Defendants in this Action pursuant to the Agreements entered into by and between the parties.

The Facts

6. On or about September 21, 2021, Plaintiff and Defendants entered into an Agreement ("Agreement 1") whereby Plaintiff agreed to purchase all rights to Company Defendant's future receivables having an agreed upon value of \$108,000.00. A copy of the Agreements is annexed hereto as Exhibit A.

7. On or about November 9, 2021, Plaintiff and Defendants entered into an Agreement ("Agreement 2" collectively with Agreement 1 "Agreements") whereby Plaintiff agreed to purchase all rights to Company Defendant's future receivables having an agreed upon value of \$108,000.00. A copy of the Agreements is annexed hereto as Exhibit B.

8. Pursuant to the Agreements, Company Defendant agreed to remit to Plaintiff 15% ("Specified Percentage") of their receivables. Company Defendant further agreed to have one bank account approved by Plaintiff (the "Bank Account") from which Company Defendant authorized Plaintiff to make ACH withdrawals until \$108,000.00 and \$108,000.00 were fully paid to Plaintiff. Said withdrawals were a good faith estimate of the Specified Percentage of the Company Defendants' receivables at the time the Agreements were entered into.

9. In addition, Guarantor(s) agreed to guarantee any and all amounts owed to Plaintiff from Company Defendant upon a breach in performance by Company Defendant.

10. Plaintiff remitted the Purchase Price for the future receivables to Company Defendant as agreed. Initially, Company Defendant met its obligations under the Agreements.

11. Company Defendant ceased remitting to Plaintiff the Plaintiff's share of Purchased Receivables and otherwise breached the Agreements by intentionally impeding and preventing Plaintiff from receiving the Specified Percentage of Company Defendants' receivables, while conducting regular business operations and collecting revenue.

12. Company Defendant made remitted \$55,311.22 of the receivables purchased by Plaintiff, leaving a balance of unremitted receivables in the amount of \$52,688.78. In addition, pursuant to the Agreements, Company Defendant incurred NSF fees in the amount of \$105.00, Default Fees in the amount of \$2,500.00 and attorneys' fees in the amount of \$15,806.63.

13. Company Defendant made remitted \$15,525.00 of the receivables purchased by Plaintiff, leaving a balance of unremitted receivables in the amount of \$92,475.00. In addition, pursuant to the Agreements, Company Defendant incurred NSF fees in the amount of \$350.00, Default Fees in the amount of \$2,500.00 and attorneys' fees in the amount of \$27,742.50.

14. Despite due demand, Company Defendant has failed to remit the purchased amount due and owing by Company Defendant to Plaintiff under the Agreements.

15. Additionally, Guarantor(s) were responsible for all amounts incurred as a result of any breach of the Company Defendant.

16. There remains a balance due and owing to Plaintiff on the Agreements in the amount of \$194,167.91 plus interest, costs, and disbursements.

AS AND FOR THE FIRST CAUSE OF ACTION
(Breach of Contract)

17. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 14 of this complaint as though fully set forth at length herein.

18. Plaintiff gave fair consideration to Company Defendant which was tendered for the right to receive the aforementioned receivables. Accordingly, Plaintiff fully performed under the Agreements.

19. Upon information and belief, Company Defendant is still conducting regular business operations and still collecting receivables.

20. Company Defendant has materially breached the Agreements by failing to remit to Plaintiff the Plaintiffs share of Future Receivables, as required under the Agreements and otherwise intentionally impeding and preventing Plaintiff from receiving the proceeds of the receivables purchased by them.

21. Upon information and belief, Company Defendant has also materially breached the Agreements by using more than one depositing bank (account which has not been approved by Plaintiff.

22. By reason of the foregoing, Plaintiff has suffered damages in the amount of \$194,167.91, plus interest, costs, and disbursements.

AS AND FOR A SECOND CAUSE OF ACTION
(Personal Guarantee)

23. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 20 of this complaint as though fully set forth at length herein.

24. Pursuant to the Agreements, Guarantor(s) personally guaranteed that Company Defendant would perform its obligations thereunder and that he would be personally liable for any loss suffered by Plaintiff as a result of a breach by Company Defendant.

25. Company Defendant has breached the Agreements as detailed above.

26. By reason of the foregoing, Plaintiff is entitled to judgment against Guarantor(s) based on his personal guarantee in the sum of \$194,167.91, plus interest, costs, and disbursements.

WHEREFORE, plaintiff NEWCO CAPITAL GROUP VI LLC requests judgment against defendants DARWIN EVOLUTION CONSTRUCTION INC D/B/A D.E.C. RESTORATIONS ; D.E.C. RESTORATIONS - CHARLOTTE ; D.E.C. RESTORATIONS - DURHAM ; D.E.C. RESTORATIONS - NORCROSS ; DEC RESTORATIONS ; D.E.C RESTORATIONS ; SKY HOMES, LLC ; STONE CONCRETE,INC and CONO DARWIN GUTIERREZ as follows:

- (i) On the first cause of action of the complaint, Plaintiff requests judgment against Company Defendant in the amount of \$194,167.91, plus interest, costs, and disbursements;
- (ii) On the second cause of action of the complaint, Plaintiffs request judgment against Guarantor(s) in the amount of \$194,167.91, plus interest, costs, and disbursements;
- (iv) For such other and further relief as this Court deems just and proper.

Dated: New York, New York
July 13, 2022

/s/ariel bouskila

Ariel Bouskila, Esq.
Berkovitch & Bouskila, PLLC
Attorneys for Plaintiff
80 Broad St Suite 3303
New York, New York 10004
Phone:(212)729-1477
Fax:(347)342-3192

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONTARIO

NEWCO CAPITAL GROUP VI LLC

Index No.:

Plaintiff,

-against-

DARWIN EVOLUTION CONSTRUCTION INC D/B/A D.E.C.
RESTORATIONS ; D.E.C. RESTORATIONS - CHARLOTTE ;
D.E.C. RESTORATIONS - DURHAM ; D.E.C. RESTORATIONS -
NORCROSS ; DEC RESTORATIONS ; D.E.C RESTORATIONS ;
SKY HOMES, LLC ; STONE CONCRETE,INC and
CONO DARWIN GUTIERREZ

Defendants

NOTICE OF COMMENCEMENT OF ACTION
SUBJECT TO MANDATORY ELECTRONIC FILING

PLEASE TAKE NOTICE that the matter captioned above, which has been commenced by filing of the accompanying documents with the County Clerk, is subject to mandatory electronic filing pursuant to Section 202.5-bb of the Uniform Rules for the Trial Courts. This notice is being served as required by Subdivision (b) (3) of that Section.

The New York State Courts Electronic Filing System ("NYSCEF") is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and self-represented parties. Counsel and/or parties who do not notify the court of a claimed exemption (see below) as required by Section 202.5-bb(e) must immediately record their representation within the e-filed matter on the Consent page in NYSCEF. Failure to do so may result in an inability to receive electronic notice of document filings.

Exemptions from mandatory e-filing are limited to: 1) attorneys who certify in good faith that they lack the computer equipment and (along with all employees) the requisite knowledge to comply; and 2) self-represented parties who choose not to participate in e-filing. For additional information about electronic filing, including access to Section 202.5-bb, consult the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF Resource Center at 646-386-3033 or efile@courts.state.ny.us.

Dated: July 13, 2022

/s/ariel bouskila

Ariel Bouskila, Esq.
Berkovtich & Bouskila, PLLC
Attorneys for Plaintiff
80 Broad St Suite 3303
New York, New York 10004
Phone:(212)729-1477
Fax:(347)342-3192

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

PHILLIP SCAGLIONE, being duly sworn, states:

I am an authorized representative of Plaintiff NEWCO CAPITAL GROUP VI LLC in the within action. I have read the foregoing Verified Complaint and know the contents thereof; the same is true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.


The foregoing statements are true under penalties of perjury.

PHILLIP SCAGLIONE,

By: 

Sworn to before me this

July 13, 2022.



Notary Public

Ariel Bouskila
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 02BO6334934
Qualified in Rockland County
Commission Expires Dec. 28, 2023