

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Cartesian Survey Services, LLC v. Moncon, Inc.

2026 NY Slip Op 00235 · No. 2024-07890; 2024-08106 · Decided January 21, 2026

SUMMARY

The New York Appellate Division, Second Department, affirmed a \$299,500 judgment entered after the defendant defaulted on liability in a breach-of-contract action involving structural surveying services. The court held that substantive liability defenses could not be raised for the first time at a damages inquest and dismissed the appeal from the intermediate order.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Cheryl E. Chambers, J.; Lourdes M. Ventura, J.; James P. McCormack, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	January 21, 2026
DOCKET	2024-07890; 2024-08106
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an order directing entry of a \$299,500 judgment after a default judgment on liability and a damages inquest, and from the resulting judgment.
STANDARD OF REVIEW	The Appellate Division reviewed the appeal from the judgment and the issues raised concerning the July 24, 2024 order under CPLR 5501(a) (1); it dismissed the direct appeal from the order under CPLR 5701(a) (2).
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Moncon, Inc. v. Cartesian Survey Services, LLC

TOPICS

- default judgment
- default
- breach of contract
- appellate procedure
- civil procedure

PRACTICE AREAS

civil procedure

contracts

commercial litigation

construction law

appellate procedure

QUESTIONS PRESENTED

1. Whether the appeal from the July 24, 2024 order was properly before the Appellate Division after entry of the judgment.
2. Whether the issues raised concerning the order were reviewable on the appeal from the resulting judgment.
3. Whether a defaulting defendant may raise substantive liability arguments at an inquest limited to damages.
4. Whether the judgment for \$299,500 should be affirmed.

HOLDINGS

1. The appeal from the July 24, 2024 order must be dismissed because no appeal lies as of right from an order that does not decide a motion made on notice, and any direct appeal from the order terminated upon entry of the judgment.
2. The issues raised concerning the July 24, 2024 order were brought up for review and considered on the appeal from the judgment.
3. A defaulting defendant is deemed to have admitted the complaint's factual allegations, reasonable inferences, and basic allegation of liability; the sole issue at a damages inquest is the extent of the plaintiff's damages.
4. Moncon improperly raised substantive arguments against liability at the inquest, and those arguments were not properly addressable at an inquest limited to damages.
5. The court declined to consider issues concerning the plaintiff's motion and defendant's cross-motion that were decided in the October 2, 2023 order because defendant's appeal from that order had been dismissed for failure to timely perfect.

KEY QUOTATIONS

*"A defaulting defendant is "deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them"" (at *2)*

*"The sole issue to be determined at an inquest is the extent of damages sustained by the plaintiff"" (at *2)*

FACTUAL BACKGROUND

Cartesian Survey Services, LLC allegedly entered into several agreements with Moncon, Inc. to provide structural surveying services for construction projects on which Moncon was the general contractor or construction manager. The parties extended Moncon's deadline to answer to November 18, 2022, but Moncon failed to timely appear or answer. After liability was established by default, the Supreme Court conducted an inquest and awarded Cartesian \$299,500 in damages.

PROCEDURAL HISTORY

Plaintiff commenced an action for breach of contract. After the parties stipulated to extend defendant's time to answer through November 18, 2022, defendant failed to timely answer. The Supreme Court granted plaintiff leave to enter a default judgment on liability, denied defendant's motion to compel acceptance of a late answer, and directed a damages inquest. Following the inquest, the court entered judgment for plaintiff in the principal sum of \$299,500. The Appellate Division dismissed the appeal from the July 24, 2024 order and affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- Matter of Aho, 39 NY2d 241, 248
- Woodson v. Mendon Leasing Corp., 100 NY2d 62, 71
- Rokina Opt. Co. v. Camera King, 63 NY2d 728, 730
- Gonzalez v. Wu, 131 AD3d 1205, 1206
- Castaldini v. Walsh, 186 AD3d 1193, 1194
- Brightside Home Improvements, Inc. v. Northeast Home Improvement Servs., 208 AD3d 446, 450
- Bank of N.Y. Mellon Trust Co., N.A. v. Ahmed, 204 AD3d 972, 973
- Jihun Kim v. S & M Caterers, Inc., 136 AD3d 755, 756
- Suburban Graphics Supply Corp. v. Nagle, 5 AD3d 663, 665
- Bray v. Cox, 38 NY2d 350, 353
- Finn v. Wilmington Sav. Fund Socy., FSB, 230 AD3d 649, 652
- Deutsche Bank Natl. Trust Co. v. Bonilla, 230 AD3d 635, 636

OPINION

PER CURIAM.

Cartesian Survey Servs., LLC v Moncon, Inc. (2026 NY Slip Op 00235) Cartesian Survey Servs., LLC v Moncon, Inc. 2026 NY Slip Op 00235 Decided on January 21, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on January 21, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department MARK C. DILLON, J.P. CHERYL E. CHAMBERS LOURDES M. VENTURA JAMES P. MCCORMACK, JJ. 2024-07890 2024-08106 (Index No. 61563/22) [*1]Cartesian Survey Services, LLC, respondent, v Moncon, Inc., appellant. Cermele & Wood LLP, White Plains, NY (Michael R. Wood and Geoffrey S. Pope of counsel), for appellant.

Robert F. Zerilli, Yonkers, NY (Joseph Becker of counsel), for respondent. DECISION & ORDER
In an action, inter alia, to recover damages for breach of contract, the defendant appeals from (1) an order of the Supreme Court, Westchester County (Thomas Quiñones, J.), dated July 24, 2024, and (2) a judgment of the same court dated August 9, 2024.

The order dated July 24, 2024, upon an order of the same court dated October 2, 2023, among other things, granting that branch of the plaintiff's motion which was for leave to enter a default judgment on the issue of liability against the defendant, and after an inquest on the issue of damages, directed the entry of a judgment against the defendant in the principal sum of \$299,500.

The judgment, upon the order dated July 24, 2024, is in favor of the plaintiff and against the defendant in the principal sum of \$299,500. ORDERED that the appeal from the order dated July 24, 2024, is dismissed; and it is further, ORDERED that the judgment is affirmed; and it is further, ORDERED that one bill of costs is awarded to the plaintiff.

The plaintiff allegedly entered into several agreements with the defendant, whereby the plaintiff agreed to, among other things, provide "structural surveying services" for projects on which the defendant was the general contractor or the construction manager.

On or about June 14, 2022, the plaintiff commenced this action, inter alia, to recover damages for breach of contract. In October 2022, the parties executed a stipulation extending the defendant's time to answer or otherwise respond to the complaint to November 18, 2022.

In January 2023, the plaintiff moved, inter alia, for leave to enter a default judgment on the issue of liability against the defendant based on the defendant's failure to timely appear or answer the complaint. In support, the plaintiff asserted that the defendant did not file an answer to the complaint on or before November 18, 2022, in accordance with the stipulation.

The defendant opposed the motion and cross-moved pursuant to CPLR 2004 and 3012(d) to compel the plaintiff to accept its late answer. In an order dated October 2, 2023, the Supreme Court, among other things, granted that branch of the plaintiff's [*2]motion which was for leave to enter a default judgment on the issue of liability against the defendant and denied the defendant's cross-motion.

The court directed an inquest on the issue of damages. Following the inquest, the Supreme Court entered a judgment, upon an order dated July 24, 2024, in favor of the plaintiff and against the defendant in the principal sum of \$299,500.

The defendant appeals. The appeal from the order dated July 24, 2024, must be dismissed because no appeal lies as of right from an order that does not decide a motion made on notice (see CPLR 5701[a][2]), and any possibility of taking a direct appeal therefrom terminated with the entry of the judgment in the action (see Matter of Aho, 39 NY2d 241, 248).

The issues raised on the appeal from the order dated July 24, 2024, are brought up for review and have been considered on the appeal from the judgment (see CPLR 5501[a][1]). A defaulting defendant 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), "including the basic allegation of liability" (Rokina Opt.

Co. v Camera King, 63 NY2d 728, 730). "The sole issue to be determined at an inquest is the extent of damages sustained by the plaintiff" (Gonzalez v Wu, 131 AD3d 1205, 1206; see Rokina Opt. Co. v Camera King, 63 NY2d at 730; Castaldini v Walsh, 186 AD3d 1193, 1194).

Here, the Supreme Court properly concluded that, at the inquest, the defendant improperly raised substantive arguments against its liability, which are not properly addressed at an inquest on damages (see Brightside Home Improvements, Inc. v Northeast Home Improvement Servs., 208 AD3d 446, 450; Bank of N.Y. Mellon Trust Co., N.A. v Ahmed, 204 AD3d 972, 973; Jihun Kim v S & M Caterers, Inc., 136 AD3d 755, 756; Suburban Graphics Supply Corp. v Nagle, 5 AD3d 663, 665).

The defendant does not raise any arguments with respect to the testimony and the evidence that the plaintiff introduced at the inquest concerning the sums that the plaintiff was owed. We decline to consider any issues regarding the plaintiff's motion and the defendant's cross-motion that were determined in the order dated October 2, 2023, to the extent that the defendant raises such issues, as the defendant's appeal from that order was dismissed for failure to timely perfect (see Bray v Cox, 38 NY2d 350, 353; Finn v Wilmington Sav.

Fund Socy., FSB, 230 AD3d 649, 652; Deutsche Bank Natl. Trust Co. v Bonilla, 230 AD3d 635, 636). In light of our determination, the parties' remaining contentions need not be addressed. Accordingly, we affirm the judgment. DILLON, J.P., CHAMBERS, VENTURA and MCCORMACK, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court