

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