

**Planet Home Lending, LLC v Polaris Home Loans,
LLC**

2024 NY Slip Op 31398(U)

April 17, 2024

Supreme Court, New York County

Docket Number: Index No. 651500/2023

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

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| <p>PRESENT: <u>HON. MARY V. ROSADO</u></p> <p align="center"><i>Justice</i></p> <p>-----X</p> <p>PLANET HOME LENDING, LLC</p> <p align="center">Plaintiff,</p> <p align="center">- v -</p> <p>POLARIS HOME LOANS, LLC,</p> <p align="center">Defendant.</p> <p>-----X</p> | <p>PART 33M</p> <p>INDEX NO. <u>651500/2023</u></p> <p>MOTION DATE <u>01/02/2024</u></p> <p>MOTION SEQ. NO. <u>001</u></p> <p align="center">DECISION + ORDER ON MOTION (AMENDED)¹</p> |
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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, there being no opposition and good cause having been shown, Plaintiff Planet Home Lending, LLC’s (“Plaintiff”) January 2, 2024 motion (NYSCEF Doc. 6) for an Order granting (1) a default judgment in favor of Plaintiff and against Defendant Polaris Home Loans, LLC (“Defendant”)², and (2) a money judgment in favor of Plaintiff and against Defendant in the amount of \$364,141.05, plus Plaintiff’s reasonable attorneys’ fees and costs in the amount of \$2,064.28, with pre-judgment and post-judgment interest accruing at the statutory rate, is granted in part and denied in part.

I. Discussion

a. Plaintiff’s Motion for a Default Judgment Against Defendant is Granted

An applicant for default judgment against a defendant must submit: (i) proof of service of the summons and complaint, (ii) proof of the facts constituting the claim, and (iii) proof of the

¹ This Decision and Order amends and supersedes the Decision and Order on Motion Sequence 1 filed on April 8, 2024 (NYSCEF Doc. 15).

² While Plaintiff’s Affirmation in Support also requests an Order granting Plaintiff a default judgment against Defendant Best Capital Funding (NYSCEF Doc. 6 at 3), the Court finds that this request was made erroneously as Best Capital Funding is not included as a defendant in this case.

defaulting defendant's failure to answer or appear (*PV Holding Corp v AB Quality Health Supply Corp*, 189 AD3d 645 [1st Dept 2020]). Affidavits submitted in support of a motion for default judgment only need to allege enough facts to allow a court to assess where a viable cause of action exists (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). In undertaking this review, the Court is mindful that "defaulters are deemed to have admitted all factual allegations in the complaint and all reasonable inferences that flow from them (*Al Fayed v Barak*, 39 AD3d 371, 372 [1st Dept 2007]).

The Court finds that Plaintiff has satisfied proof of service by providing an Affidavit of Service evidencing service of the Summons and Complaint upon Defendant on April 10, 2023 (NYSCEF Doc. 8). Plaintiff has also satisfied its minimal burden of proving the facts constituting its claim by submitting an Affidavit of Merit sworn to December 12, 2023 (NYSCEF Doc. 9). Further, Defendant has failed to file an answer or otherwise appear despite its time for doing so having expired. Therefore, entry of default judgment against Defendant and in favor of Plaintiff is appropriate.

b. Plaintiff's Motion for a Money Judgment is Denied

The Court of Appeals has held that "[w]here the damages sought are for a 'sum certain or for a sum which can by computation be made certain', [CPLR 3215(a)] makes it permissible for the clerk, without notice to the defendant...and upon proof by the affidavit of a party setting forth the facts constituting the claim, the default and the amount due, to enter judgment up to the amount demanded in the complaint" (*Reynolds Secur., Inc. v Underwriters Bank & Trust Co.*, 44 NY2d 568, 572 [1978]). Further, "[t]he term 'sum certain' in this context contemplates a situation in which, once liability has been established, there can be no dispute as to the amount due, as in actions on money judgments and negotiable instruments" (*Id.*). Where the damages sought in a

complaint are not for a sum certain, “judgment against a defaulting party may be entered only upon application to the court” (*Matter of Gupta*, 38 AD3d 445, 446 [1st Dept 2007]).

Here, Plaintiff’s Complaint demands a money judgment “in an amount to be determined at trial, but in no event less than \$362,712.99” (NYSCEF Doc. 1 at p. 11). In light of the foregoing, the Court finds that Plaintiff’s claim is not for a sum certain. As such, an inquest on damages against Defendant on Plaintiff’s First through Third Causes of Action is directed.

c. Plaintiff’s Motion for Attorneys’ Fees is Granted in Part and Denied in Part

While Plaintiff’s notice of motion includes a demand for attorneys’ fees, it is well established that where a party fails to establish the amount and reasonableness of attorneys’ fees claim, it is not entitled to judgment in a sum certain” (*Yonkers Ave. Dodge, Inc. v BZ Results, LLC*, 95 AD3d 774, 775 [1st Dept 2012]).

Here, Plaintiff’s Affidavit of Merit (NYSCEF Doc. 9) establishes Plaintiff’s entitlement to attorneys’ fees but fails to provide any evidence “from which the reasonableness of the amount they claim could be assessed” (*Maina v Rapid Funding NYC LLC*, 148 AD3d 596 [1st Dept 2017]). In light of the foregoing, Plaintiff is entitled to legal fees incurred in connection with this action in an amount to be determined at the inquest.

Accordingly, it is hereby,

ORDERED that Plaintiff Planet Home Lending, LLC’s January 2, 2024 motion for a default judgment in favor of Plaintiff and against Defendant Polaris Home Loans, LLC is granted as to liability on Plaintiff’s First through Third Causes of Action; and it is further

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ORDERED that an inquest on Plaintiff Planet Home Lending, LLC's reasonable attorneys' fees incurred in connection with this action as well as damages in favor of Plaintiff and against Defendant Polaris Home Loans, LLC on Plaintiff's First through Third Causes of Action is directed; and it is further

ORDERED that a copy of this order with notice of entry be served by the movant upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is directed, upon the filing of a note of issue and a certificate of readiness and the payment of proper fees, if any, to place this action on the appropriate trial calendar for the inquest hereinabove directed; and it is further

ORDERED that within ten days of entry, Plaintiff Planet Home Lending, LLC shall serve a copy of this Decision and Order, with notice of entry, upon Defendant Polaris Home Loans, LLC; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

4/17/2024
DATE

Mary V Rosado
MON. MARY V. ROSADO, J.S.C.

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| CHECK ONE: | <input type="checkbox"/> | CASE DISPOSED | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION | |
| | <input checked="" type="checkbox"/> | GRANTED | <input type="checkbox"/> | GRANTED IN PART | <input type="checkbox"/> OTHER |
| APPLICATION: | <input type="checkbox"/> | SETTLE ORDER | | SUBMIT ORDER | |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | | FIDUCIARY APPOINTMENT | <input type="checkbox"/> REFERENCE |