

**Hassan v Ahmed**

2015 NY Slip Op 30181(U)

February 4, 2015

Supreme Court, New York County

Docket Number: 653980/2013

Judge: Shirley Werner Kornreich

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 54

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AISHA HASSAN,

Index No.: 653980/2013

Plaintiff,

**DECISION & ORDER**

-against-

AMARBIN Y. AHMED, NIZAM UDDIN AKBARI,  
ALBERTO BARATOV and IMPERIAL DIAMOND  
AND JEWELRY CORP.,

Defendants.

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SHIRLEY WERNER KORNREICH, J.:

Plaintiff Aisha Hassan moves for a default judgment, pursuant to CPLR 3215, against defendants Amarbin Y. Ahmed, Nizam Uddin Akbari, Alberto Baratov, and Imperial Diamond and Jewelry Corp (Imperial). Plaintiff's motion is granted, on default, for the reasons that follow.

*I. Background and Procedural History*

The facts recited are taken from the verified complaint and the documentary evidence.

On September 6, 2012, plaintiff met with Ahmed to discuss the sale of diamonds.

Complaint ¶ 12. On September 9, 2012, plaintiff entered into an agreement with Ahmed and Baratov for the sale of two diamonds, for a total of \$610,000.<sup>1</sup> Plaintiff gave the diamonds to Ahmed and Baratov for Akbari to inspect. After inspection, the diamonds were placed into a sealed envelope, and the outside of the envelope was signed by Ahmed and Akbari.<sup>2</sup> ¶ 17.

<sup>1</sup> It is unclear if the agreement was oral or written.

<sup>2</sup> Ahmed and Akbari's signatures were affixed to the sealed envelope to ensure that plaintiff provided the same diamonds that were inspected by defendants.

Defendants agreed to make a down payment of \$70,000 and pay the remaining \$540,000 balance within thirty days of the agreement. ¶ 13. Plaintiff was to hold the envelope until defendants paid the balance. ¶ 14.

Defendants, however, only made a \$30,000 down payment. ¶ 16. Ahmed and Baratov subsequently gave plaintiff a check for \$540,000, dated September 12, 2012, written on Imperial's bank account and signed by Akbari. *See* Dkt. 14 at 2.<sup>3</sup> Plaintiff was to present the check to defendants' bank, when advised by defendants, within thirty days of the agreement. *See* Dkt. 10 at 2. It is unclear why the check was not for \$580,000, since defendants' down payment was short \$40,000. Nor does plaintiff explain if she attempted to cash the check or what happened to it.

Plaintiff waited until the thirty day period elapsed and then called defendants numerous times. ¶ 20. Ahmed informed plaintiff that defendants no longer desired to complete the transaction. Plaintiff subsequently opened the sealed envelope in the presence of Ahmed and discovered that the diamonds were fake. *Id.* According to plaintiff, Ahmed admitted that he and Akbari had replaced the real diamonds with fake diamonds during the inspection. ¶ 21. Plaintiff alleges that Akbari admitted to paying Ahmed \$34,000 to help commit the fraud and that Akbari refuses to return the real diamonds or to pay plaintiff the balance of the purchase price. ¶ 22.

On November 15, 2013, plaintiff commenced the instant action alleging (1) conspiracy to commit fraud; (2) fraud; and (3) conversion. Imperial was served on December 4, 2013, Akbari was served on December 16, 2013, Ahmed was served on January 8, 2014, and Baratov was

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<sup>3</sup> References to "Dkt." followed by a number refer to documents in this action filed in the New York State Electronic Filing System.

served on March 14, 2014. *See* Dkt. 13 (affidavits of service). None of the defendants answered or moved to dismiss. On October 24, 2014, plaintiff filed the instant default judgment motion, seeking (1) \$610,000 in damages, attorneys' fees, and interest from September 9, 2012; and (2) return of the diamonds. Defendants were served with the instant motion, but did not file opposition papers.

## II. Discussion

"When a defendant has failed to appear . . . the plaintiff may seek a default judgment against him." CPLR 3215(a). To succeed on a motion for a default judgment, plaintiff must submit (1) proof of service upon the respondent of the notice of hearing and complaint or such other document which commenced the proceeding; (2) proof of the respondent's failure to appear; and (3) a proposed order. CPLR 3215(f). The affidavit in support of the entry of a default judgment "need only allege enough facts to enable a court to determine that a viable cause of action exists." *Joosten v Gale*, 129 AD2d 531, 535 (1st Dept 1987). However, the plaintiff is required to prove damages. *Reynolds Sec. v Underwriters Bank & Trust Co.*, 44 NY2d 568 (1978).

Plaintiff is entitled to a default judgment on the fraud and conversion claims due to defendants' failure to respond to the complaint or oppose the instant motion. The default judgment, however, is for liability only. Plaintiff's requested damages include both the unpaid contract amount (though no breach of contract claim is asserted) *and* return of the diamonds. Plaintiff is not entitled to both. She must choose either rescission and return of the diamonds, which would require her to return the \$30,000 deposit, or money damages. If she chooses to proceed to a hearing on money damages, a hearing regarding damages is ordered, at which

plaintiff will return the check or explain what happened to it and further prove her damages.

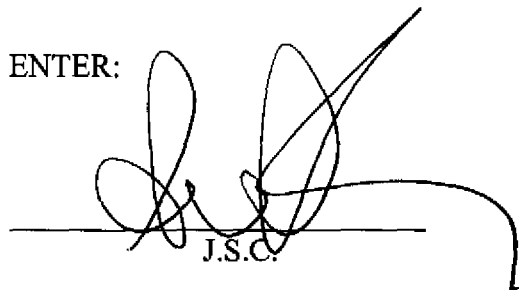
Accordingly, it is

ORDERED that the motion by plaintiff Aisha Hassan for a default judgment against defendants Amarbin Y. Ahmed, Nizam Uddin Akbari, Alberto Baratov, and Imperial Diamond and Jewelry Corp. is granted on liability, on default, and plaintiff is directed to either return the \$30,000 deposit and apply to the court for an order and judgment directing defendants to return the diamonds to her or, alternatively, should plaintiff seek money damages, the issue of amount of money damages to which she is entitled is referred to a Special Referee to hear and determine in accordance with this decision; it is further

ORDERED that plaintiff shall serve a copy of this decision and order with notice of entry, as well as a completed information sheet,<sup>4</sup> on the Special Referee Clerk at [spref-nyef@nycourts.gov](mailto:spref-nyef@nycourts.gov), who is directed to place this matter on the calendar of the Special Referee's part for the earliest convenient date and notify the parties of the time and date of the hearing.

Dated: February 4, 2015

ENTER:



J.S.C.

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<sup>4</sup> Copies are available in Rm. 119M at 60 Centre Street, New York, NY, and on the court's website by following the links to "Court Operations", "Courthouse Procedures", and "References".