

Santander Bank, N.A. v 3rd Ward LLC
2017 NY Slip Op 30337(U)
February 3, 2017
Supreme Court, New York County
Docket Number: 651104/2014
Judge: Lucy Billings
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

SANTANDER BANK, N.A. f/k/a SOVEREIGN
BANK, N.A. f/k/a SOVEREIGN BANK,

Index No. 651104/2014

Plaintiff

- against -

DECISION AND ORDER

3RD WARD LLC, JASON GOODMAN, and
MATTHEW BLESSO,

Defendants

LUCY BILLINGS, J.S.C.:

Plaintiff moves for a default judgment against defendant limited liability company (LLC) and the two individual defendants. C.P.L.R. § 3215. Plaintiff claims that defendant LLC leased equipment from plaintiff and failed to make monthly payments under their lease beginning November 5, 2013, totalling \$44,711.25 and that the individual defendants guaranteed those payments.

Plaintiff served its summons and complaint on defendant LLC by personal service on the New York Secretary of State April 22, 2014, C.P.L.R. § 311-a(a), and on defendant Blesso by substitute service April 24, 2014. C.P.L.R. § 308(2). Plaintiff stipulated to extend defendant Goodman's time to answer until July 1, 2014, after the other defendants' time to answer had expired. C.P.L.R. § 3012(a) and (c). No defendant answered. Although more than a year elapsed between July 1, 2014, and plaintiff's service of this motion October 29, 2015, see C.P.L.R. § 3215(c), plaintiff

santandr.179

1

explains its delay by its unsuccessful applications to the Clerk of the Court in July 2014 and February 2015. Brooks v. Somerset Surgical Assoc., 106 A.D.3d 624, 625 (1st Dep't 2013); Smith v. Arce, 78 A.D.3d 612, 612 (1st Dep't 2010); Harris v. Morrison, 49 A.D.3d 276, 276 (1st Dep't 2008); Than Truong v. All Pro Air Delivery, 278 A.D.2d 45, 45 (1st Dep't 2000). Plaintiff was unable to establish the sum due through statements of account to defendants as required by the Clerk, see C.P.L.R. § 3215(a), because, as attested by plaintiff's Vice President, defendant LLC made payments through deductions from its account maintained in an Automatic Clearing House.

Plaintiff's witness now presents and lays the foundation for an account ledger showing these deductions as a business record exception the rule against hearsay. C.P.L.R. § 4518(a). Defendant LLC's payments ceased when its account was depleted and not replenished. The payments made, however, circumstantially authenticate the equipment lease so as to charge the payor under the lease. People v. Frye, 94 A.D.3d 589, 589 (1st Dep't 2012); People v. Pierre, 41 A.D.3d 289, 291 (1st Dep't 2007); People v. Bryant, 12 A.D.3d 1077, 1079 (4th Dep't 2004); People v. Jean-Louis, 272 A.D.2d 626, 627 (2d Dep't 2000). See Singer Asset Fin. Co., LLC v. Melvin, 33 A.D.3d 355, 357-58 (1st Dep't 2006); Acevedo v. Audubon Mgt., 280 A.D.2d 91, 95 (1st Dep't 2001). Another Vice President of plaintiff authenticates the guaranties by recounting its procedure of requesting the individual defendants' self-authenticated signatures on their

personal identifying documents to compare to the signatures on the guaranties.

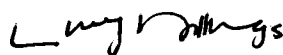
Only defendant Goodman opposed plaintiff's motion. Although he attempts to excuse his default based on an expectation that the parties' dispute would be settled, he presents no facts supporting such an expectation. In fact he admits that plaintiff refused to negotiate in good faith and that he did not timely respond to plaintiff with the financial information plaintiff requested to enable it to negotiate a settlement. The further fact that plaintiff did not continue to extend his time to answer after July 1, 2014, unequivocally signalled to Goodman that he then needed to answer.

Goodman also recites conclusory defenses, again without any supporting facts: plaintiff's breach of contract, breach of the covenant of good faith and fair dealing, and failure to mitigate damages. Nowhere does he dispute plaintiff's account of defendants' default under the lease and guaranties or of their failure to inform plaintiff of the leased equipment's location, so that plaintiff might repossess and rerent the equipment to mitigate plaintiff's damages.

Even if Goodman supported his excuse and defenses, he failed to move to serve a late answer and failed to appear at either of the two hearings on plaintiff's motion, where he might have learned how he might avoid a default judgment. C.P.L.R. § 3012(d); Tanpico v. Royal Caribbean Intl., 79 A.D.3d 484, 484 (1st Dep't 2010); Gazes v. Bennett, 70 A.D.3d 579, 579 (1st Dep't

2010); Verizon N.Y. Inc. v. Case Constr. Co. Inc., 63 A.D.3d 521, 521 (1st Dep't 2009); Cirillo v. Macy's, Inc., 61 A.D.3d 538, 540 (1st Dep't 2009). See, e.g., DaimlerChrysler Is. Co. v. Seck, 82 A.D.3d 581, 582 (1st Dep't 2011). Therefore the court grants plaintiff's motion for a default judgment against all defendants, jointly and severally, for \$44,711.25, with interest from November 5, 2013. C.P.L.R. § 3215(f). The Clerk shall enter a judgment in favor of plaintiff and against defendants for that amount.

DATED: February 3, 2017



LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.