

Russell Brands LLC v FXFL LLC
2017 NY Slip Op 31477(U)
July 10, 2017
Supreme Court, New York County
Docket Number: 159110/2016
Judge: Kathryn E. Freed
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

NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED, J.S.C. Justice

PART 2

-----X

RUSSELL BRANDS LLC.

INDEX NO. 159110/2016

Plaintiff,

MOTION DATE 3/9/2017

- v -

MOTION SEQ. NO. 001

FXFL LLC,

Defendant.

DECISION AND ORDER

-----X

The following e-filed documents, listed by NYSCEF document number 7, 8, 9, 10, 11, 12

were read on this application to/for Judgment - Default

Upon the foregoing documents, it is

Granted without opposition.

Plaintiff Russell Brands, LLC moves, pursuant to CPLR 3215, for a default judgment against defendant FXFL, LLC for fees due for goods, wares, and merchandise delivered to defendant which remain unpaid after payment was duly demanded.

This action was commenced via the filing of a summons and complaint on or about October 28, 2016. Copies of the summons and complaint and the affidavit of service thereof are annexed as Exhibit B.

Pursuant to CPLR 3215(g)(4)(i), plaintiff served an additional mailing of the summons and complaint on defendant on December 8, 2016. Exhibit C.

Plaintiff's attorney, Eric Canals, an associate member of the law firm of Maidenbaum & Associates, avers that defendant has failed to interpose an answer or otherwise appear in this action, that the time to interpose an answer has not been extended, and that defendant is therefore in default. Canals also explains that a default submission was rejected by the judgment clerk in New York County because the name which appears on the caption of the instant matter is different than the name which appears on the invoices which plaintiff has produced as evidence of the goods delivered and unpaid. The plaintiff appends a copy of the defendant's Department of State (DOS) Division Entity Information printout, which shows that the correct suffix for FXFL is "LLC" and not "INC", as appears on the invoices. However, the address for both entities is 590 Madison Avenue, Suite 25C, New York, NY 10022. Copies of the invoices are annexed as Exhibit A, along with a ledger. A copy of the DOS Corporations Entity Information printout is annexed as Exhibit D, and a copy of the County Clerk's rejection is annexed as Exhibit E.

The Court also notes that an Affidavit in Support is annexed from William M. Howell, Senior Credit Manager of plaintiff, who attests to having personal knowledge of this matter, and who additionally personally reviewed the documents and computer entries and invoices herein and attests to their accuracy. He avers that, based on the goods, wares and merchandise that were delivered to defendant during the period from September 14 through October 20, 2015,

plaintiff is owed a total of \$40,749.68. Plaintiff therefore requests judgment in the amount \$40,749.68 plus interest from October 20, 2015 plus costs and disbursements.

Conclusions of Law:

CPLR 3215(a) provides, in pertinent part, that “[w]hen a defendant has failed to appear, plead or proceed to trial..., the plaintiff may seek a default judgment against him.” It is well settled that “[o]n a motion for leave to enter a default judgment pursuant to CPLR 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party’s default in answering or appearing.” *Atlantic Cas. Ins. Co. v RJNJ Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011). Moreover, a default in answering the complaint is deemed to be an admission of all factual statements contained in the complaint and all reasonable inferences that flow from them. *See Woodson v Mendon Leasing Corp.*, 100 NY2d 63 (2003).

In the case at bar, plaintiff has submitted its summons and amended complaint, along with the affidavit of service relating thereto, proof that defendant has defaulted, and an affidavits of facts constituting the claim establishing, inter alia, that the total sum owed to it by defendant is, \$40,749.68, plus interest from October 20, 2015, costs and disbursements, the amount sought in this action.

Therefore, in accordance with the foregoing, it is hereby:

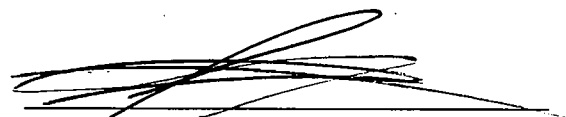
ORDERED that the motion by the plaintiff Russell Brands, LLC., for a default judgment against defendant FXFL, LLC, is granted in the amount of \$40,749.68 plus interest from October 20, 2015 plus costs and disbursements; and it is further,

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff and against defendant FXFL, LLC, in the amount of \$40,749.68 plus interest from October 20, 2015, plus costs and disbursements; and it is further

ORDERED that plaintiff Russell Brands, LLC., shall serve a copy of this order on defendant FXFL, LLC, and on the Trial Support Office at 60 Centre Street, Room 158; and it is further,

ORDERED that this constitutes the decision and order of this Court.

HON. KATHRYN FREED
JUSTICE OF SUPREME COURT


HON. KATHRYN E. FREED, J.S.C.

7/10/2017
DATE

CHECK ONE:

- CASE DISPOSED
- GRANTED
- SETTLE ORDER
- DO NOT POST

DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

APPLICATION:

CHECK IF APPROPRIATE:

REFERENCE