

<b>Reed Exhibitions Ams. v BlogWorld, LLC</b>
2017 NY Slip Op 32011(U)
September 22, 2017
Supreme Court, New York County
Docket Number: 155698/2016
Judge: Kathryn E. Freed
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. KATHRYN E. FREED**  
*Justice*

**PART 2**

-----X

REED EXHIBITIONS AMERICAS, A DIVISION OF REED  
ELSEVIER, INC.

**INDEX NO. 155698/2016**

Plaintiff,

**MOTION DATE 7/6/2017**

- v -

**MOTION SEQ. NO. 001**

BLOGWORLD, LLC,

Defendant.

**DECISION AND ORDER**

-----X

The following e-filed documents, listed by NYSCEF document number 8, 9, 10, 11, 12, 13  
were read on this application to/for Default Judgment

Upon the foregoing documents, it is

Ordered that the motion is denied with leave to renew upon proper papers.

Plaintiff, Reed Exhibitions Americas, a Division of Reed Elsevier, Inc.  
(hereinafter "RX") moves, pursuant to CPLR 3215, for an order directing that a  
default judgment be granted it against defendant BlogWorld, LLC, (hereinafter  
"BW") for the balance of payments due and owing to plaintiff pursuant to a  
Settlement Agreement between the parties.

Plaintiff RX is an international event organizer which provides services for  
certain trade shows, exhibitions and industry conferences. Defendant BW owns

and operates a trade show known as the Blog World & New Media Expo. The parties originally entered into a Service Agreement, at the specific request of BW, pursuant to which the parties contracted to co-locate a series of news conferences and/or trade shows at RX's existing events and to co-locate and co-promote BW's trade shows at the plaintiff's 2011 Book Expo America. Exhibit A.

On December 3, 2012, the parties entered into a Termination and Settlement Agreement whereby they agreed to mutually terminate the previous Service Agreement and they further agreed that BW owed RX a total sum of \$365,000.00. The parties further agreed that payment would be made in accordance with an installment plan set forth in the Settlement Agreement. Exhibit B.

Plaintiff, through the Affidavit of Benjamin Kinberg, its Director of Collections, avers that defendant has defaulted on those payments and owes an outstanding balance of \$200,300.00, plus interest since March 19, 2013.

Plaintiff now moves, pursuant to CPLR 3215, for a default judgment against BW. In support of the motion, plaintiff annexes an Affirmation of Mailing, by its attorney, Jeffrey K. Maidenbaum, of Maidenbaum & Associates, P.L.L.C., attesting to the fact that an additional mailing, in compliance with CPLR 3215(g)(4)(i), was made to defendant, that the additional mailing included an additional copy of the summons and complaint, that service was made pursuant to section 306(b) of the

Business Corporation Law of the State of New York, and that more than 20 days have elapsed since said mailing. Exhibit D.

Plaintiff's attorney further affirms that defendant has failed to interpose an answer or otherwise appear in this action and that its time to do so has not been extended. Plaintiff therefore requests that this Court issue an order directing entry of judgment in its favor against defendant for the sum of \$200,300.00 with interest from March 19, 2013, plus costs and disbursements.

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).

Here, issues exist regarding service of the summons and complaint which preclude the issuance of a default judgment. In the affidavit of service, annexed as part of Exhibit C, purporting to establish proper service of process on BW, the process server, Dianne Loch, states that she made service on defendant by serving a “Suitable Person: by delivering thereat a true copy of each to BlogWorld, LLC, a person of suitable age and discretion.” Under the category of “Other” at the bottom

of the form, is added the words, “Service address is a CMRA, Defendants box #531, Documents given to Katelyn, person in charge.” Notably, the process server did not check the box for Corporation. Nor did the process server make an additional mailing of the summons and complaint.

Clearly service was improper since BW is not a person but a limited liability company (“LLC”). Thus, it had to be served pursuant to Limited Liability Company Law section 304 for foreign limited liability companies or CPLR 311-a. It clearly was not served pursuant to Limited Liability Law section 304, since that section addresses service of an LLC via the Secretary of State which was clearly not made here.

CPLR 311-a requires that service on an LLC be made upon specific principals of an LLC, none of which apply here, or upon an agent designated by, or upon another person designated to, receive process for, the LLC. Here, the affidavit of service is only states that it was served on someone named “Katelyn” and it is silent regarding whether “Katelyn” had authority to accept service on behalf of BW. Indeed, the motion papers contain “no evidence that “Katelyn” was in any way an employee of BW, much less an agent authorized by appointment or law to accept service on its behalf (citations omitted).” *Gleizer v American Airlines, Inc.*, 30 AD3d 376, 376 (2d Dept 2006).

Since proper service on defendant BW has not been established (see CPLR 311 [a][1]), the motion is thus denied with leave to renew upon proper papers.

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

**ORDERED** that the motion by plaintiff, Reed Exhibitions Americas, a Division of Reed Elsevier, Inc., is denied with leave to renew upon the submission of proper papers; and it is further,

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

9/22/2017

DATE



KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  
SETTLE ORDER  
DO NOT POST

DENIED

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: