

Albany Med. Coll. v Dwamena
2017 NY Slip Op 32379(U)
November 8, 2017
Supreme Court, New York County
Docket Number: 158068/2016
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTYPRESENT: HON. KATHRYN E. FREEDPART 2*Justice*

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ALBANY MEDICAL COLLEGE

INDEX NO. 158068/2016

Plaintiff,

MOTION DATE _____

- v -

AFARI DWAMENA,

MOTION SEQ. NO. 002

Defendant.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 12, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to/for

DEFAULT JUDGMENTUpon the foregoing documents, it is ordered that the motion is **granted**.

Plaintiff Albany Medical College moves, pursuant to CPLR 3215, for a default judgment against defendant Afari Dwamena based on the latter's alleged failure to make payments pursuant to two promissory notes issued to him under a student loan program. Plaintiff claims that, as a result of defendant's failure to make payments on the notes, he owes plaintiff \$32,764.26, plus statutory interest, as well as attorneys' fees in the amount of \$10,921.41. Defendant does not oppose the motion. After a review of plaintiff's motion papers, as well as the relevant statutes and case law, the motion is **granted to the extent discussed below**.

Plaintiff commenced this action by filing of a summons and complaint on September 26, 2016. Doc. 1. Defendant was served with process on November 9, 2016. Doc. 3. Pursuant to this Court's order dated March 2, 2017, such service was deemed timely *nunc pro tunc*. Doc. 10. A

supplemental mailing of the summons and complaint was made to defendant pursuant to CPLR 3215(g) on December 6, 2016. Doc. 16.

Plaintiff's attorney, Janeen M. Howarth, Esq. of Smith, Carroad, Levy & Wan, P.C., states in her affirmation in support of the motion that defendant has failed to appear and plead in the captioned action, that the time to interpose an answer has not been extended, and that defendant is therefore in default. Howarth further avers that, despite plaintiff's demand for payment on the notes, defendant still owes plaintiff \$32,764.26, with interest from June 30, 2015, plus attorneys' fees in the amount of \$10,921.41.

Frances Albert, Executive Vice President and Chief Financial Officer of plaintiff, submits an affidavit in support of the motion. In her affidavit, Albert states that defendant was issued two promissory notes made under the Albany Medical College Kraft Student Loan Program; pursuant to the notes, defendant was loaned a total of \$32,820.52; defendant last made a payment towards his debt on June 30, 2015; and that defendant owes plaintiff a total of \$32,764.26. Albert annexes to her affidavit copies of the notes and defendant's statement of account. Albert correctly asserts that the notes require defendant to reimburse plaintiff for attorneys' fees incurred in the collection of the debt (Doc. 18), which she and Howarth maintain total \$10,921.41 herein. Thus, Albert asserts that plaintiff is owed \$32,764.26, plus statutory interest from June 30, 2015, plus attorneys' fees of \$10,921.41.

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 complaint, along with the proof of service relating thereto, proof that defendant has defaulted, as well as the affidavit of Albert setting forth the facts constituting the claim and documentation supporting her contentions thus establishing that defendant owes plaintiff the sum of \$32,764.26, plus interest from June 30, 2015. Although plaintiff correctly maintains that it is entitled to attorneys’ fees for the collection of the alleged debt (Doc. 18), its contention that plaintiff is owed in excess of \$10,000 for attorneys’ fees is unsupported by anything other than conclusory statements by Howarth and Albert.

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

ORDERED that the branch of the motion by plaintiff ALBANY MEDICAL COLLEGE for a default judgment against defendant AFARI DWAMENA is granted in the amount of \$32,764.26, plus interest from June 30, 2015; and it is further,

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff ALBANY MEDICAL COLLEGE as against defendant AFARI DWAMENA in the amount of \$32,764.26, plus interest from June 30, 2015; and it is further

ORDERED that the branch of the motion by plaintiff ALBANY MEDICAL COLLEGE seeking the recovery of attorneys' fees from defendant AFARI DWAMENA is hereby severed, and the Clerk is directed to sever the claims for attorneys' fees and disbursements, and it is further

ORDERED that plaintiff's severed claim for attorneys' fees shall continue, and an inquest to compute the amount of such attorneys' fees is referred to a Special Referee to hear and report; and it is further

ORDERED that plaintiff ALBANY MEDICAL COLLEGE shall serve a copy of this order on defendant AFARI DWAMENA and on the Trial Support Office at 60 Centre Street, Room 158; and it is further

ORDERED that within 14 days of the entry of this order on the NYSCEF system, plaintiff shall file a Note of Issue, pay the appropriate fees, and serve a copy of this order with notice of entry, as well as a completed information sheet, on the Special Referee Clerk at sref-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 all parties of the hearing date; and it is further

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

11/8/2017

DATE



KATHRYN E. FREED, J.S.C.

CHECK ONE:

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CASE DISPOSED

GRANTED

☐

DENIED

SETTLE ORDER

DO NOT POST

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐

OTHER

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REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: