

**Triborough Bridge & Tunnel Auth. v Emmanuel Tr.
Inc.**

2017 NY Slip Op 32564(U)

December 5, 2017

Supreme Court, New York County

Docket Number: 450703/2016

Judge: Kathryn E. Freed

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED

PART 2

Justice

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TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY,
Plaintiff,

INDEX NO. 450703/2016

- v -

MOTION DATE _____

EMMANUEL TRANSIT INC. and HARRISON JEAN,
Defendants.

MOTION SEQ. NO. 001

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 7, 8, 9, 10, 11, 12
were read on this motion to/for JUDGMENT - DEFAULT

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

In this action by plaintiff Triborough Bridge and Tunnel Authority ("TBTA") against defendants Emmanuel Transit Inc. and Harrison Jean ("Harrison" and "Jean", respectively), to collect unpaid tolls, violations and late fees under the Public Authorities Law and TBTA Regulations, plaintiff moves, pursuant to CPLR 3215, for a default judgment against defendants. After a review of the motion papers, and after consideration of the relevant statutes and case law, the motion is **granted**.

Plaintiff's motion for default is two pronged. Plaintiff and defendants entered into a settlement agreement on May 8, 2015, wherein plaintiff agreed to accept the sum of \$66,000.00 in full settlement of 437 toll violations committed by Emmanuel, totaling \$107,244.00 in penalties

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and late fees. Said agreement set forth a payment schedule for the agreed upon amount. Paragraph 13 of the settlement agreement contained an acceleration clause for the full amount previously owed should defendants fail to make said payments. Made part of the settlement and incorporated by reference was a personal guarantee signed and executed by Jean should the settlement agreement be breached. Both the settlement agreement and the personal guarantee consented to the entry of judgment for the full amount owed against the defendants should the settlement amount not be paid. See Exhibit B, as part of Exhibit A to the instant motion. In the personal guarantee, Jean agreed to waive all rights to assert defenses or counterclaims to the obligations imposed by that document.

On November 11, 2015, Josh Youngman, Esq., on behalf of Peter Merani, PC, Attorneys for plaintiff, notified Emmanuel that it was in default of the settlement agreement and that, should it fail to make the agreed upon payments, plaintiff would proceed to enter a judgment against it. A copy of this notice was also mailed to Jean. Plaintiff asserts in its Verified Complaint that defendants have defaulted on the settlement agreement and that it is entitled to an entry of judgment in the amount of \$106,144.00, which represents the full amount owed, of \$107,244.00, less the payment of \$1100.00 made by defendants.

In the second prong of plaintiff's motion, plaintiff alleges that defendant Emmanuel, as the owner of a vehicle or vehicles which crossed the Henry Hudson Bridge, a bridge in New York City under plaintiff's jurisdiction, committed an additional 995 separate toll violations from March 15, 2015 until January 19, 2016 by crossing the said bridge with an invalid E-Z Pass tag, and failed

to make timely payments in response to the toll invoices sent to her under plaintiff's TBTA's Tolls by Mail program. As a result, plaintiff alleges that defendant owes it an additional \$57,438.00 consisting of \$7938.00 in unpaid tolls and \$49,500.00 in unpaid administrative fees.

Plaintiff annexes to its motion a copy of the Summons and Verified Complaint with an Affidavit of Service (NYSCEF Docs. Nos. 1 and 4). The complaint is verified by Julia R. Christ, Deputy General Counsel for plaintiff. *Id.* Also annexed to the Summons and Verified Complaint is a copy of plaintiff's "Violation Citation Detail" sheets listing every date on which defendant's vehicle crossed the Henry Hudson Bridge without paying the toll. The detail sheet for the earlier violations of the Settlement Agreement are made part of that agreement and are annexed thereto. The detail sheet for the second set of violations are made part of Exhibit A to the instant motion. *Id.*

The instant motion for a default judgment was filed on or about September 29, 2017. In support of the motion, plaintiff submits, *inter alia*, an Affidavit of Non-Military Service and an Affidavit of a second mailing of the Summons and Verified Complaint pursuant to CPLR 3215. In an Affirmation in Support sworn to on July 1, 2016, plaintiff, through its attorney, Michael N. Zeleznock, Esq., an associate of the Law Offices of Peter C. Merani, P.C., avers that the amounts set forth above are due and owing to plaintiff and that plaintiff should be granted judgment against defendants, jointly and severably, for the amount of \$106,144.00 due in full under the settlement agreement and for the amount of \$57,438.00 as against Emmanuel. Counsel additionally avers that defendants' time to answer the Complaint has expired and defendants have not answered or

otherwise appeared. Plaintiff therefore urges that it is entitled to a default judgment pursuant to CPLR 3215.

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 R.J.N.J 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 an affidavit of service establishing that defendants were served with the Summons and Verified Complaint. It also established that it served defendants with an additional copy of the Summons and Verified Complaint pursuant to CPLR 3215 and that Jean was not in the military. The Verified Complaint sets forth the facts constituting the claim and the affirmation of plaintiff’s attorney establishes that defendants have defaulted. Therefore, plaintiff has established that it is entitled to a judgment against both defendants in the total sum of \$106,144.00, and against defendant Emmanuel alone in the amount of \$57,438.00, the amounts demanded in this action.

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

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ORDERED that the motion by plaintiff Triborough Bridge and Tunnel Authority for a default judgment against defendants Emmanuel Transit Inc. and defendant Harrison Jean is granted in the amount of \$106,144.00, and a default judgment as against Emmanuel Transit Inc. alone is granted in the additional amount of \$57,438.00; and it is further,

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff Triborough Bridge and Tunnel Authority and against defendants Emmanuel Transit Inc. and defendant Harrison Jean in the amount of \$106,144.00 and the Clerk is directed to enter an additional judgment against defendant Emmanuel Transit Inc. in the amount of \$57,438.00; and it is further

ORDERED that plaintiff Triborough Bridge and Tunnel Authority shall serve a copy of this order on defendants Emmanuel Transit Inc. and defendant Harrison Jean, 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.

12/5/2017
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: