

**U.S. Bank Equip. Fin., a Div. of U.S. Bank N.A. v
Emergecare Med., PC**

2018 NY Slip Op 30002(U)

January 2, 2018

Supreme Court, New York County

Docket Number: 151845/2015

Judge: Kathryn E. Freed

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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

PART 2

Justice

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U.S. BANK EQUIPMENT FINANCE, A DIVISION OF U.S. BANK
NATIONAL ASSOCIATION,

INDEX NO. 151845/2015

Plaintiff,

MOTION DATE _____

- v -

MOTION SEQ. NO. 002

EMERGE CARE MEDICAL, PC, DAVID ISTVAN, SEAN WATERS

Defendant.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for

JUDGMENT - DEFAULT

Upon the foregoing documents, it is ordered that this motion is granted without opposition.

Plaintiff moves for leave to enter a default judgment against the defendants Emergcare Medical, PC (“Emergcare”), David Istvan (“Istvan”) and Sean Waters (Waters”).

Factual and Procedural Background:

On or about February 24, 2015, plaintiff commenced the within action. On or about November 8, 2016 plaintiff moved in Motion Sequence 001 to sever the action against defendants Emergcare and Istvan and for leave to enter a default judgment against those defendants. The Court denied that motion on or about April 5, 2017, with leave to renew upon the submission of proper papers. See NYSCEF Doc. 14. Plaintiffs initiated the instance action for leave to file a default judgment against all of the defendants on or about November 11, 2017.

See NYSCEF Docs. 18, 19 and 20. Copies of the summons and complaint are attached hereto, and made a part hereof, as Exhibit A. Plaintiff submits proof of effecting service twice against the defendants in Exhibit B and NYSCEF Doc. 19. Plaintiff additionally, through its attorney Charles A. Gruen, avers that it also served a second Notice of Motion on defendants on November 8, 2017. See NYSCEF Doc. 19. Plaintiff also annexes copies of letters informing them of their default hereunder to defendants Emergicare and Istvan, dated September 12, 2016, and to Waters dated July 13, 2017 as Exhibit C. The Court notes that service was effected later of defendant Waters, so his default date was likewise later.

Plaintiff, through the affirmation of its attorney, avers that all three defendants have failed to file an answer or other responsive pleadings in the within action and therefore requests the Court direct the Clerk of the Court to enter a default judgment against defendants. Plaintiff further, through affirmation of its attorney, avers that the amounts due from said defaulting defendants, based upon plaintiff's business records, as itemized hereto, is \$46,568.25 and prays for judgment jointly and severally against all three defendants in that amount.

Plaintiff additionally annexes in Exhibit D "An Affidavit of Facts as to Plaintiff's Damages, in Narrative Form, Pursuant to §202.46(b) of the UCR for the Supreme and County Courts" from Traci Serreyn, Recovery Specialist for plaintiff, sworn to July 31, 2017, in the State of Minnesota, County of Lyon. Plaintiff also annexes a Certificate of Conformity dated July 31, 2017. Also as Exhibit A, of the Affidavit, plaintiff annexes a copy of the Equipment Finance Agreement, personal guarantees and assignments to Plaintiff. Plaintiff also annexes an

Affidavit Non-Military Service for both Istvan and Waters. Based on the foregoing, plaintiff alleges that it is owed a total of \$46,568.25.

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 therefrom. *See Woodson v Mendon Leasing Corp.*, 100 NY2d 63 (2003).

Here, the affidavit of service reflects that defendants were served with the summons and complaint and the affirmation of plaintiff’s counsel submitted in support of the motion establishes that defendants have failed to appear or otherwise answer in this matter. Further, plaintiff submits an affidavit from Traci Serreyn, a Recovery Specialist for plaintiff with personal knowledge of defendant’s debt, along with copies of the Equipment Finance Agreement, personal guarantees and assignments to Plaintiff. Plaintiff has therefore established the facts constituting the claim. Thus, plaintiff is entitled to a judgment against defendants in the amount of \$46,568.25.

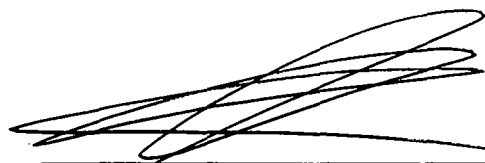
In light of the foregoing, it is hereby:

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff U.S. Bank Equipment Finance, a division of U.S. Bank National Association, against defendants Emergcare Medical, David Istvan and Sean Waters, in the amount of \$46,568.25; and it is further,

ORDERED that plaintiff, within 20 days of the posting of this order to NYSCEF, shall serve a copy of the same, with notice of entry, on defendants; and it is further

ORDERED that this constitutes the decision and order of the court

1/2/2018
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER FIDUCIARY APPOINTMENT REFERENCE

DO NOT POST