

Aspire Fed. Credit Union v Singh

2018 NY Slip Op 30026(U)

January 4, 2018

Supreme Court, New York County

Docket Number: 155176/2017

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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ASPIRE FEDERAL CREDIT UNION
Plaintiff,

INDEX NO. 155176/2017

- v -

JAGMOHAN SINGH,
Defendant.

MOTION SEQ. NO. 001

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, it is ordered that the motion is **denied with leave to renew upon proper papers.**

In this action, inter alia, to foreclose a security interest on a promissory note, plaintiff Aspire Federal Credit Union moves, pursuant to CPLR 3215, for a default judgment against defendant Jagmohan Singh. The motion is unopposed. After a review of the motion papers, as well as the relevant statutes and case law, the motion is **denied with leave to renew upon proper papers.**

FACTUAL AND PROCEDURAL BACKGROUND:

On or about December 13, 2013, defendant executed a promissory note (“the note”) pursuant to which plaintiff, a federally chartered credit union, loaned defendant \$840,000. Doc 10.¹ The note required defendant to make monthly installment payments until the maturity date of January 1, 2017, at which time the unpaid principal balance and accrued interest was to be due and payable. Doc. 10. The note was secured by a security agreement also dated December 13, 2013. Doc. 11. The security agreement required defendant to repay the principal amount of the loan in the manner described in the note. Doc. 11.

In order to secure the payment of the note and the performance of defendant’s obligations pursuant to the security agreement, defendant granted to plaintiff “a continuing security interest and lien in and to all of the [c]ollateral” listed in the security agreement. Doc. 11. The collateral included, inter alia, taxi cabs, taxi licenses, and taxi medallions “described on schedule A, annexed hereto.” Doc. 11. The security agreement further required defendant to keep the collateral at his garage “at the address set forth on the annexed Schedule A.” Doc. 11. The security agreement also provided that, if defendant defaulted in payment, or in any other manner as defined by the agreement, plaintiff could demand immediate payment of the entire amount of defendant’s indebtedness, plus interest. Doc. 11.

Plaintiff perfected its lien on the collateral by filing a UCC-1 financing statement with the Secretary of State on December 13, 2013. Doc. 12.

By letters dated May 12, May 19, June 6, June 17, August 31, October 17, October 31, and November 4, 2016, as well as January 4, 2017, Nicole Seymour, Operations Manager of Aspire Medallion Funding LLC, wrote to defendant to advise him that he was in default of the terms of

¹ All references are to the documents filed with NYSCEF in connection with this matter.

his loan and that, as a result, he could lose his taxi medallion. Ex. G.² Some of the letters were mailed to defendant at 1665 Pershing Street, Valley Stream, New York (“the Valley Stream address”), whereas others were mailed to 124-17 135th Avenue, Wakefield, New York (“the Wakefield address”). Ex. G.

On June 6, 2017, plaintiff commenced the captioned action against defendant seeking, inter alia, to foreclose on its security interest in the note. Doc. 1. On June 10, 2017, defendant was personally served with the summons and verified complaint at the Valley Stream address. Doc. 8.

On August 23, 2017, plaintiff filed the instant motion for a default judgment against defendant. Doc. 5. In support of the motion, plaintiff submits the affirmation of its attorney, Robert F. Bedford, Esq. attesting, inter alia, to the fact that defendant failed to answer the complaint (Doc. 6); the affidavit of Nicole Seymour, Operations Manager for plaintiff; the summons and verified complaint filed June 6, 2017 (Doc. 1); an affidavit of service reflecting that defendant was personally served with process at the Valley Stream address on June 10, 2017 (Doc. 8); an affidavit of service of plaintiff’s notice pursuant to CPLR 3215(g)(4) (Doc. 9); the note (Doc. 10); the security agreement (Doc. 11); the UCC-1 form (Doc. 12); and the letters sent to defendant advising him of his default. Ex. G. Plaintiff served the motion on defendant by mailing it to him at the Valley Stream address. Doc. 16.

In her affidavit in support of the motion, Seymour states, inter alia, that despite being sent the default letters referenced above, defendant has failed to remit payment. Doc. 13. Seymour further represents that the collateral specifically includes New York City Taxi and Limousine Commission (“TLC”) taxi medallion #9B79. Doc. 13. Additionally, Seymour asserts that, as a

² Although these letters are annexed to the motion as Exhibit G, they are not filed on NYSCEF.

result of defendant's default, plaintiff is entitled to foreclosure of its security interest in the collateral. Doc. 13.

LEGAL CONCLUSIONS:

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." *See Atlantic Cas. Ins. Co. v. RJNJ Servs. Inc.*, 89 A.D.3d 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 N.Y.2d 63 (2003).

Plaintiff has established personal service of the summons and verified complaint on defendant. Doc. 8. It has also established, through the affirmation of its attorney, that defendant has failed to answer the complaint. Doc. 6. Although plaintiff purports to establish the facts constituting the claim by means of Seymour's affidavit, the note and the security agreement, it is not entitled to a default judgment since the affidavit and the exhibits annexed to the motion fail to accomplish this goal.

Initially, the security agreement refers to certain items to be used as collateral which are "described on Schedule A, annexed hereto." Doc. 11. Additionally, the security agreement required defendant to maintain the collateral at the address specified in Schedule A. Doc. 11. However, no Schedule A is annexed to the motion. Given that plaintiff is seeking to recover

collateral kept at the address set forth in Schedule A, such relief cannot be granted without the information contained therein.

Next, although Seymour represents in her affidavit that the collateral includes TLC taxi medallion #9B79, no such medallion number is listed in the security agreement. Although this medallion number may be listed in Schedule A, that document, as noted above, is not annexed to the motion.

Issues relating to the default letters mailed to defendant also preclude the granting of this motion. First, some of the letters were mailed to the Valley Stream address, whereas others were mailed to the Wakefield address. Doc. 12. Seymour does not explain in her affidavit why some letters were mailed to one address and some were mailed to another. For instance, she does not address whether one address was defendant's residence and the other his place of business. The security agreement lists defendant's address as the Wakefield address and Seymour provides no explanation as to why any of the letters were mailed to the Valley Stream address. Nor does Seymour explain why the default letters were mailed by her, in her capacity as Operations Manager for Aspire Medallion Funding LLC, when plaintiff in this action is Aspire Federal Credit Union and she submits an affidavit in support of this motion on behalf of the latter entity. In her affidavit, Seymour does not address the relationship, if any, between plaintiff and Aspire Medallion Funding LLC or why she wrote the letters on behalf of that entity and not on behalf of plaintiff. In addition, since the letters were not filed with NYSCEF, they cannot be considered by this Court.

Further, although the security agreement lists defendant's address as the Wakefield address, the instant motion was served on defendant at the Valley Stream address. Thus, it is possible that defendant was not aware that this motion was filed.

Plaintiff asserts that, after defendant filed for bankruptcy protection under chapter 7 of the Bankruptcy Code, it moved to vacate the bankruptcy stay and that the said motion was granted by the United States District Court for the Eastern District of New York on May 9, 2017. However, no copy of the order purportedly lifting the stay is attached to plaintiff's motion.

Additionally, although plaintiff includes in the motion an affidavit of service of a notice pursuant to CPLR 3215(g)(4), the notice itself is not annexed to the motion. Doc. 9.

Finally, Seymour's affidavit, executed in New Jersey, is not accompanied by a certificate of conformity. See CPLR 2309 (c).

In light of the foregoing, it is hereby:

ORDERED that the motion is denied with leave to renew upon proper papers; and it is further

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

1/4/2018
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: