

Aspire Fed. Credit Union v Singh
2018 NY Slip Op 30218(U)
February 8, 2018
Supreme Court, New York County
Docket Number: 655312/2017
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,

INDEX NO. 655312/2017

Plaintiff,

- v -

GURMEET SINGH,

MOTION SEQ. NO. 001

Defendant.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for

DEFAULT JUDGMENT

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

In this action, inter alia, for breach of contract and 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 Gurmeet 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 July 12, 2013, December 13, 2013, defendant executed a promissory note ("the note") pursuant to which plaintiff, a federally chartered credit union, loaned defendant \$808,800.

Doc 12.¹ The note required, among other things, that defendant make monthly installment payments until the maturity date of August 1, 2018, at which time the unpaid principal balance and accrued interest was to be due and payable. Doc. 12. The note further stated that:

The total of [defendant's] indebtedness on the loan evidenced by this Note (the "Loan") shall not exceed eighty percent (80%) of the value of the New York City taxicab medallion securing the Loan (the "Medallion"). The value of the Medallion shall be based on the quoted value as reported by the New York City Taxi and Limousine Commission as of the end of the then prior Month. Should the unpaid principal balance of this Note exceed eighty percent (80%) of the value of the Medallion, then [defendant] shall repay to [plaintiff] upon demand so much of the Loan as shall cause the unpaid balance to total no more than eighty percent (80%) of the value of the Medallion.

Doc. 12.

The note was secured by a security agreement also dated July 12, 2013. Doc. 13. The security agreement required defendant to repay the principal amount of the loan in the manner described in the note. Doc. 13.

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. 13, at par. 3. The collateral included, inter alia, taxi cabs, taxi licenses, and taxi medallions "described on schedule A, annexed hereto." Doc. 13, at par. 2 (a). The security agreement further required defendant to keep the collateral at his garage "at the address set forth on the annexed Schedule A." Doc. 13, at par. 4 (l). The security agreement also provided that, in the event of a default by defendant, plaintiff "shall have the right to declare the entire amount of the indebtedness and interest accrued thereon immediately due and payable by giving written notice thereof to [defendant] and, upon the

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

giving of such notice, the indebtedness shall be immediately due and payable by [defendant] to [plaintiff]." Doc. 13, at par. 6 (j). Additionally, the security agreement set forth certain conditions which triggered plaintiff's right to take possession of the collateral. Doc. 13, at par. 7.

Plaintiff perfected its lien on the collateral by filing a UCC-1 financing statement with the New York State Department of State on July 12, 2013. Doc. 14. The UCC-1 listed "debtor's exact full legal name" as Gurmeet "Silngh". Doc. 14.

By letters dated May 30 and June 30, 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 his loan and that, as a result, he could lose his taxi medallion. Doc. 15.

On August 11, 2017, plaintiff commenced the captioned action against defendant seeking, inter alia, damages for breach of contract and to foreclose on its security interest in the note. Doc.

1. The complaint was verified by plaintiff's attorney, Ophelie Garnier-Wade, Esq. Doc. 1. Defendant was served with the summons and verified complaint on August 12, 2017. Doc. 2. Defendant was thereafter served with a copy of the summons and verified complaint pursuant to CPLR 3215(g). Doc. 5.

On October 13, 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, Garnier-Wade, attesting, inter alia, to the fact that defendant failed to answer the complaint (Doc. 8, at par. 13); the affidavit of Seymour; the summons and verified complaint (Doc. 1); an affidavit of service reflecting that defendant was personally served with process (Doc. 2); an affidavit of service of plaintiff's notice pursuant to CPLR 3215(g) (Doc. 5); the note (Doc. 12); the security agreement (Doc. 13); the UCC-1 form (Doc. 14); and the letters sent to defendant advising him of

his default. Doc. 15. The motion also includes proof that the application was served on defendant. Doc. 19.

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. 16. Seymour further represents that the collateral specifically includes New York City Taxi and Limousine Commission ("TLC") taxi medallion #3D72. Doc. 16. Additionally, Seymour asserts that, as a result of defendant's default, plaintiff is entitled to foreclosure of its security interest in the collateral. Doc. 16.

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. 2. It has also established, through the affirmation of its attorney, that defendant has failed to answer the complaint. Doc. 8. Although plaintiff purports to establish the facts constituting the claim by submitting 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. 13. Additionally, the security agreement required defendant to maintain the collateral at the address specified in Schedule A. Doc. 13. However, no Schedule A is annexed to the security agreement. 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 #3D72, 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.

While this Court notes that the UCC-1 filed by plaintiff refers to New York City Taxicab Medallion Number 3D72 as part of the collateral, the form is defective insofar as it refers to the “debtor’s exact full legal name” as Gurmeet “Silngh” (Doc. 14) whereas the note, the security agreement, and the complaint all refer to him as “Gurmeet Singh”.

Further, although the note provides that defendant’s indebtedness shall not exceed 80% of the value of the taxi medallion securing the loan (Doc. 12), Seymour does not address the value of the medallion. Thus, she has failed to establish that the total amount sought by plaintiff, i.e., the principal amount of \$747,689.44, plus interest in the amount of \$6,288.06, plus late fees of \$1,010.44, exceeds 80% of the value of the medallion.

Issues relating to the default letters mailed to defendant also preclude the granting of this motion. In her letter to defendant dated May 30, 2017, Seymour stated that defendant owed money

to Aspire Medallion Funding LLC and not to plaintiff. Doc. 15. Seymour fails to explain why she mailed the default letter dated June 30, 2017 to defendant 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 June 30, 2017 letter on behalf of that entity and not on behalf of plaintiff.

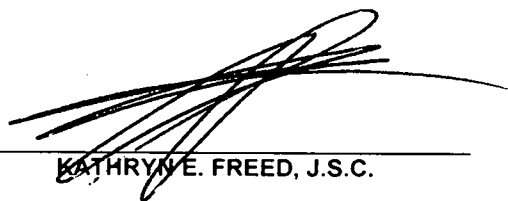
Finally, this Court notes that, although movant's counsel labeled the majority of the exhibits to the motion in NYSCEF as "Exhibit to Affirmation of Ophelie Garnier-Wade", counsel failed to label precisely what document was being filed.

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.

2/8/2018
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

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CASE DISPOSED
GRANTED
SETTLE ORDER
DO NOT POST

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DENIED

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NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

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OTHER

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REFERENCE