JP Morgan Chase Bank, N.A. v Abubakar
2018 NY Slip Op 30356(U)
March 2, 2018
Supreme Court, Queens County
Docket Number: 21585/10
Judge: Allan B. Weiss

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE **ALLAN B. WEISS** IA PART_2_

JP MORGAN CHASE BANK, N.A.,

Plaintiff,

-against-

MOHAMED ABUBAKAR d/b/a CEYLON and GLOBAL TRAVEL,

Defendants.

Index Number: 21585/10

Motion Date: 11/13/17

Motion Seq. No. 1

The following papers read on this motion by self represented defendant Mohammad Abubakar d/b/a Ceylon and Global Travel for an order vacating the default judgment entered against him.

	Papers Numbered
Order to Show Cause-Affidavits-Exhibits.....	1-6
Opposing Affirmation-Exhibits.....	7-9
Reply Affidavit-Exhibits.....	10-11

Upon the foregoing papers the motion is determined as follows:

Plaintiff JPMorgan Chase Bank, N.A. (Chase), commenced the within action on August 24, 2010, against Mohammed Abubakar d/b/a Ceylon and Global Travel and Mohammed Abubakar individually. The defendants were personally served with process on August 28, 2010, pursuant to CPLR 308(1), and affidavits of service were filed with the court on September 1, 2010.

Plaintiff Chase in its first cause of action alleged that on October 9, 2002, defendant Mohammed Abubakar d/b/a Ceylon and Global Travel (DBA) executed and delivered to plaintiff a Business Revolving Credit Account Agreement (BRCA), whereby he agreed to pay to the order of the loan holder, the principal sum of up to $10,000.00, with interest thereon the unpaid principal balance of the BRCA at a rate per annum equal to the rate of Prime plus 1.00% . It is alleged that on April 22, 2003, defendant DBA requested an

increase in the BRCA in the amount of $40,000.00, and that Chase extended the DBA a line of credit totaling $50,000.00. It was alleged that defendant DBA failed to pay each and every loan installment due under the BRCA since November 9, 2009, totaling $17,221.47, plus interest from October 9, 2009, and late charges.

The second cause of action against Mr. Abubakar was based upon his personal guarantee of defendant DBA's obligations under the BRCA.

The third cause of action against defendant DBA alleged that on October 24, 2007, said defendant executed and delivered to Chase a Business Installment Loan (BIL) whereby it promised to pay to the order of the loan holder, the principal sum of $45,600.00, with interest on the unpaid principal balance at a fixed rate per annum equal to the rate of 10.40%. Annexed to the complaint was an affidavit of a lost note. It was alleged that defendant DBA failed to pay each and every installment due under the BIL since December 24, 2009, totaling $29,476.23, together with interest from November 24, 2009 and late charges.

The fourth cause of action against Mr. Abubakar was based upon his guarantee of defendant DBA's obligations under the BIL. The fifth cause of action against all defendants sought to recover attorneys' fees, costs and expenses. The exhibits attached to the complaint identified the line of credit (BRCA) as ending in 6927 and the installment loan (BIL) as ending in 6001.

Defendants did not serve an answer or otherwise move, and their time in which to do so expired on September 17, 2010.

Plaintiff Chase thereafter served the defendants with an application for the clerk of the court to enter default judgment against the defendants and waived its claim to attorneys fees. Defendants did not oppose said application, and a default judgment was entered on October 18, 2010, against Mohammed Abubakar d/b/a Ceylon an Global Travel and Mohmmed Abubakar, jointly and severally, on the BRCA in the principal sum of $17,221.47, with interest from October 9, 2009 to September 28, 2010, at the rate of Prime plus 1.00% in the sum of $759.22, and on the BIL in the principal sum of $29,476.23, with interest from November 24, 2009 to September 28, 2010 at a rate per annum equal to the fixed rate of 10.40% in the sum of $2,794.56, together with costs and disbursements in the sum of $565.00, totaling $50,816.48.

On November 4, 2010, Mohammed Abubakar d/b/a Ceylon and Global Travel and Mr. Abubakar individually executed a stipulation of settlement with Chase. Chase executed said stipulation on October 18, 2010, the same date the default judgment was entered against the defendants. Said stipulation makes no mention of said default judgment and recites that

the DBA, Abubakar and Chase "wish to resolves Chase's claims against Defendants DBA and Abubakar" and sets forth a payment plan.

Defendant Mohammed Abubakar now moves for an order vacating the October 18, 2010 default judgment and states in his affidavit that "[t]he attorney from JPM Chase forced me to accept this judgment for a payment plan. I was recently informed by JPM Chase that they got relieved from their portion of balance and handed over to SBA for their portion"; that "[t]he whole thing happened as a result of mishandling the situation by debt settlement company hired and attorney from JPMorgan Chase pressing hard on the issue"; that "[t]he payments have been made to JPMorgan Chase under a payment plan where they got relived from their balance. The balance then handed over to SBA for collection was $15,676, however collection by treasury since April 2017 was brought the balance up to $35K and continue to add interest. Apart from loosing [sic] $8.8K to debt settlement company, I have lost tremendous amount of time that puts one in great distress situation".

Mr. Abubakar further states in his emergency affidavit that "the information on the public record impacts a lot from personal as well as credit standpoint. Further, I expect reasonable and amicable settlement from the balance of $15,676 on the loan."

Plaintiff, in opposition, asserts that the defendants have not established any basis to vacate the default judgment, pursuant to CPLR 5015. Chase's counsel in her opposing affirmation states that after the default judgment was entered on October 18, 2010, in the sum of $50,816.48, Chase entered into a Stipulation of Settlement with the judgment debtors on November 4, 2010. Chase's counsel states that pursuant to said stipulation, the judgment debtors acknowledged the debt owed Chase, and agreed to remit certainly monthly payments to Chase in satisfaction of said debt. It is further asserted that the judgment debtors defaulted under said stipulation by failing to make payments in compliance with said agreement.

Mr. Abubakar, in his reply affidavit, states that Chase, in a letter explained that it was applying a credit for an overstatement of interest, but that it did not apply the full amount of the overstatement, and that Chase in March 2015, modified the terms of the payment plan, so as to constitute a modification of the prior judgment.

Mr. Abubakar submits a letter from Chase, dated March 20, 2015, stating that the outstanding balance of the judgment was $37,316.48; that as of March 19, 2015, Mr. Abubakar agreed to pay the "Judgment Balance" in full, by paying the sum of $350.00 a month for 36 months, beginning April 25, 2015 and ending March 25, 2018, and also agreed to pay the sum of $24,716.48 for a term of one month, to be paid on March 25, 2018. The loans were identifying as ending in numbers 756001 and 756927.

Mr. Abubakar also submits a letter from Chase dated May 16, 2016, stating that it may have overstated the interest charges or fees on his business banking accounts ending in 6001 and 6927; that it was applying a credit of $4,306.97 for the potential overstated interest or fees; and that the updated balance for said accounts was $25,968.86; and that although he continued to owe the updated balance, Chase would request that the five major credit reporting agencies listed in its letter "make any necessary updates to his credit report and not report our judgment against you. It is up to each reporting agency to decide whether to report the Chase judgment".

Mr. Abubakar also submits an email from Chase dated August 22, 2017 listing the payments received from him, stating that Chase had "shared these payments with the SBA (split 50/50)" and further stated that the "loan was charged off on 8/19/10 All subsequent payments went to principal first. On 5/9/16 you were given a credit of $2234.03 that went towards interest." This email pertained only to "Payments after charge-off (SBA) loan 6001".

CPLR 5015(a) specifies the following grounds for vacatur of a default judgment: excusable default; newly discovered evidence; fraud, misrepresentation or other misconduct; lack of personal or subject matter jurisdiction; and reversal, modification or vacatur of a prior judgment. In addition, a court had the inherent discretionary power to vacate a judgment in the interests of substantial justice (*see Woodson v Mendon Leasing Corp.*, 100 NY2d 62 [2003]). "Save for the one-year requirement in section 5015 (a) (1) concerning excusable defaults, motions made pursuant to subdivisions (2), (3) and (5) contain no limitation of time, only a requirement that the time within which the motion is made be "reasonable" (David D. Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR 5015:3). The determination as to whether such a motion has been made within a reasonable time is within the motion court's discretion (see [4] Third Preliminary Rep of Advisory Comm on Prac and Pro, 1959 Legis Doc No. 17 at 205)" (*Nash v Port Auth. of NY & New Jersey*, 22 NY3d 220, 225 [2013]).

Here, the subject judgment was entered on October 18, 2010, and defendants were served with notice of entry of said judgment on October 26, 2010. However, the affidavit of service submitted herein, only states that the notice of entry was served and does not establishes that a copy of the judgment was served on the defendants. Therefore, the court finds that Mr. Abubakar's motion is not untimely under CPLR 5015(a)(1). "A party seeking to vacate a default in appearing or answering pursuant to CPLR 5015(a)(1), and thereupon to serve a late answer, must demonstrate a reasonable excuse for the default and a potentially meritorious defense to the action" (*Hamilton Pub. Relations v Scientivity, LLC*, 129 AD3d 1025, 1025 [2d Dept 2015]; *Deutsche Bank Natl. Trust Co. v Saketos*, ___AD3d___, 2018 NY Slip Op 00822 [2d Dept 2018]; 2018 N.Y. App. Div. LEXIS 831). Mr. Abubakar

offers no excuse whatsoever for his default in appearing or answering the complaint. Therefore, the issue of whether he had a potentially meritorious defense need not be addressed (*Stein v Doukas*, 157AD3d 743 [2d Dept 2018]; *Vested Bus. Brokers, Ltd. v Ragone*, 131 AD3d 1232, 1234 [2d Dept 2015]; *Cervini v Cisco Gen. Constr., Inc.*, 123 AD3d 1077[2d Dept 2014]; *Abdelqader v Abdelqader*, 120 AD3d 1275, 1276 [2d Dept 2014]).

To the extent that defendant appears to assert the existence of newly discovered evidence, the provisions of CPLR 5015(a)(2) are not available, no trial was held and the judgment entered on default.

Finally, Mr. Abubakar has not established that any circumstances exist which warrant the court to exercise its inherent discretionary power to vacate a judgment in the interests of substantial justice. Although Mr. Abubakar asserts that the was forced to "accept this judgment for a payment plan", the court notes that the default judgment was entered prior to defendants' acceptance and execution of the stipulation. Moreover, Mr. Abubakar could not have been "forced" to accept the October 18, 2010 judgment, as he defaulted in appearing and answering and thus played no role in the judgment obtained by Chase. Finally, it is clear that the parties treated the stipulation of settlement as a payment plan with respect to the judgment debt; that the terms of the payment plan were modified on March 19, 2015; and that Mr. Abubakar is seeking a further modification of the payment plan. Contrary to Mr. Abubakar's assertion the modification of the stipulation's payment plan did not constitute a modification of the default judgment.

Accordingly, as no basis exists for the vacatur of the October 18, 2010 default judgment, defendant's motion is denied in its entirety.

Dated: March 2 , 2018

J.S.C.