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| Port Auth. of N.Y. & N.J. v Kilcan |
| 2018 NY Slip Op 30637(U) |
| April 10, 2018 |
| Supreme Court, New York County |
| Docket Number: 451618/2016 |
| 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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THE PORT AUTHORITY OF NEW YORK & NEW JERSEY,

INDEX NO. 451618/2016

Plaintiff,

MOTION DATE

- v -

ANDREA KILCAN, JOHN DOE

MOTION SEQ. NO. 002

Defendant.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 11, 12, 13, 14 were read on this motion to/for

JUDGMENT - DEFAULT

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

The captioned action is brought by the Port Authority of New York & New Jersey ("Port Authority"), a body corporate and politic created by Compact between the States of New York and New Jersey. The Port Authority owns, operates, maintains, and controls the George Washington Bridge, the Lincoln Tunnel, the Holland Tunnel, the Bayonne Bridge, the Outerbridge Crossing and the Goethals Bridge. Part of its mandate for these bridges and tunnels is to collect tolls associated with their usage pursuant to N.Y. Unconsolidated Laws §6802 and N.J.S.A. 32:1-154.2. Consistent with its responsibilities, the Port Authority has initiated the underlying action against defendant to collect unpaid tolls, violations and late fees pursuant to the aforementioned laws and regulations. Plaintiff alleges that defendant Andrea Kilcan ("defendant"), as the owner of a vehicle or vehicles which traversed the facilities under its jurisdiction, committed at least 468 separate toll violations without an E-Z Pass tag between

November 5, 2014 and March 15, 2016, and failed to make timely payments in response to the citations sent to her by the Port Authority which provided her notice that she had used the Port Authority facilities without payment. As a result, the Port Authority alleges that defendant owes it a total of \$30,046.00, consisting of \$6,646.00 in unpaid tolls and \$23,400.00 in unpaid administration fees. Although the Port Authority also names as defendants "John Doe 1-100", representing the drivers of defendant's vehicles which passed through EZ Pass machines without paying tolls, the instant motion only seeks a default judgment against defendant.

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 [her]." 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 from them. *See Woodson v Mendon Leasing Corp.*, 100 NY2d 63 (2003).

The Port Authority annexes as Exhibit A, a copy of the Summons and Complaint with an Affidavit of Service. In the previous motion, the Complaint was verified by Peter Van Keuren, a Violation Analyst for the Port Authority. This Court held that Van Keuren's affidavit, alone, was insufficient to establish the Port Authority's entitlement to a default judgment against defendant given its failure to annex as an exhibit copies of the citations it sent to defendant. In

the within motion, the Port Authority has annexed as Exhibit B, a copy of the Violations Citation Detail Report, reflecting the times at which defendant drove past E-Z Pass toll booths without paying. Plaintiff additionally annexes, as Exhibit C, a copy of a Fully Executed Stipulation of Settlement, dated September 13, 2016, wherein defendant acknowledged the aforementioned indebtedness to the Port Authority and agreed to a payment schedule in exchange for a reduced amount. However, as set forth in Exhibit D, defendant defaulted on this stipulation and failed to make any of the agreed upon payments. Finally, plaintiff also annexes as Exhibit E, an Affirmation of non-military service.

In the case at bar, plaintiff Port Authority of New York & New Jersey, with the submissions included herein, has submitted sufficient facts constituting the claim establishing, inter alia, that the total sum owed to it by defendant Andrea Kilcan is \$30,046.00, the amount sought herein.

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

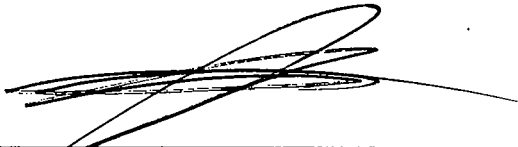
ORDERED that the motion by the plaintiff Port Authority of New York & New Jersey for a default judgment against defendant, Andrea Kilcan, is granted in the amount of \$30,046.00; and it is further,

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff and against defendant Andrea Kilcan in the amount of \$30,046.00; and it is further

ORDERED that plaintiff Port Authority of New York & New Jersey shall serve a copy of this order on defendant Andrea Kilcan, 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.

4/10/2018
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

DO NOT POST

FIDUCIARY APPOINTMENT

REFERENCE