

HSBC Bank USA, N.A. v Metrix Group, Inc.
2018 NY Slip Op 30699(U)
April 17, 2018
Supreme Court, New York County
Docket Number: 154116/2017
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

-----X

HSBC BANK USA, NATIONAL ASSOCIATION,
Plaintiff,

INDEX NO. 154116/2017

- v -

METRIX GROUP, INC. D/B/A METRIX GROUP INC., IVICIC
ZIVKO
Defendants.

MOTION SEQ. NO. 001

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23

were read on this motion to/for JUDGMENT - DEFAULT

In this action sounding, inter alia, in breach of guaranty and breach of contract, plaintiff HSBC Bank USA, National Association ("HSBC"), moves, pursuant to CPLR 3215, for a default judgment on its complaint against defendants Metrix Group, Inc., d/b/a Metrix Group Inc., and Ivicic Zivko (collectively "defendants"). After a review of the papers, and after a review of the relevant statutes and case law, the motion, which is unopposed, is granted.

FACTUAL AND PROCEDURAL BACKGROUND:

On or about April 20, 2006, defendant Metrix Group, Inc., d/b/a Metrix Group Inc., ("Metrix") executed a Business Credit Application and submitted it to plaintiff HSBC Bank USA, National Association. Doc. No. 12. The Application included a Business Lending Agreement (BLA). Doc. No. 13. After plaintiff received the application, it agreed to provide defendant Metrix with a Line of Credit ("LOC") pursuant to the terms and conditions set forth in plaintiffs' acceptance letter dated May 8, 2006. Doc. No. 14. Included in the BLA was a

paragraph wherein each person signing the BLA personally became a guarantor of any indebtedness uncured under this agreement. Pursuant to the foregoing documents, plaintiff agreed to extend credit Metrix up to the principal amount of \$100,000. The loan was personally guaranteed by defendant Ivicic Zivko. Docs. No. 12 and 13.

In an affidavit in support of the motion, Chistopher Gates, Vice-President of plaintiff, stated that, on or about January 1, 2014, defendants defaulted under the BRLOC by failing to pay the required monthly amount due Gates Aff., at par. 19. By correspondence dated April 23, 2014 and again on March 20, 2015 plaintiff demanded that defendants remit all outstanding sums due under the BRLOC. (Doc. No. 16). However, defendants failed to pay the amount owed. Gates represents that, as of April 23, 2017, defendants owed plaintiff \$122,870.87, including \$98,000.00 in principal, \$23,633.20 in interest, and \$1,237.67 in late fees based on the final billing statement dated April 19, 2017. Doc. No. 17; Gates Aff., at par. 23.

Plaintiff commenced the captioned action against defendants by filing a summons and verified complaint on May 3, 2015. Doc. No. 1. On November 13, 2017 plaintiff filed the instant motion seeking a default judgment against defendants due to its failure to answer or otherwise appear in this matter. Docs No. 10, 11 and 13. The motion is granted.

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." On a motion for a default judgment under CPLR 3215 based upon a failure to answer the complaint, a plaintiff

demonstrates entitlement to a default judgment against a defendant by submitting: (1) proof of service of the summons and complaint, (2) proof of the facts constituting its claim, and (3) proof of the defendant's default in answering or appearing. See CPLR 3215 (f); *Loughran v Giannoti*, ___ AD3d ___ (2d Dept April 11, 2018); *Gantt v North Shore-LIJ Health Sys.*, 140 AD3d 418 (1st Dept 2016).

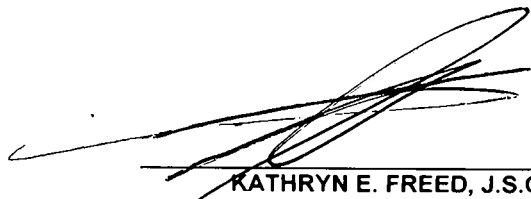
Plaintiff has satisfied the elements required by CPLR 3215 (f). Initially, plaintiff submitted proof of service of the summons and complaint.. Doc. 2. The complaint, verified by plaintiff, sets forth facts constituting the claim. See CPLR 3215 (f). Finally, the affirmation of plaintiff's counsel, Teresa Sadutto-Carley , Esq. of Platzer, Swergold, Levine, Goldberg, Katz & Jaslow, LLP establishes that defendants have failed to answer or otherwise appear in this matter. Doc. 18.

Therefore, in light of the foregoing, it is hereby:

ORDERED that the motion by plaintiff HSBC Bank USA, National Association for a default judgment on its complaint against defendants Metrix Group, Inc., d/b/a Metrix Group Inc., and Ivicic Zivko is granted in all respects, and the Clerk is directed to enter judgment in favor of plaintiff, and against defendants, in the amount of \$122,870.87, including \$98,000.00 in principal, \$23,633.20 in interest, and \$1,237.67 in late fees based on the final billing statement dated April 19, 2017, and thereafter at the statutory rate, plus costs and disbursements as taxed by the Clerk; and it is further,

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

4/17/2018
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	DO NOT POST	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE