

<b>Port Auth. of N.Y. &amp; N.J. v Execuvan Inc</b>
2018 NY Slip Op 30909(U)
May 10, 2018
Supreme Court, New York County
Docket Number: 452848/2015
Judge: Robert D. Kalish
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ROBERT D. KALISH PART IAS MOTION 29EFM

Justice

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INDEX NO. 452848/2015

THE PORT AUTHORITY OF NEW YORK & NEW JERSEY,

MOTION DATE 03/07/2018

Plaintiff,

MOTION SEQ. NO. 003

- v -

EXECUVAN INC, JOHN DOE and HARRISON JEAN

Defendants.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 29, 30, 31 were read on this motion to/for JUDGMENT - DEFAULT

Motion by Plaintiff Port Authority of New York and New Jersey for a default judgment, pursuant to CPLR 3215, is granted for the reasons stated herein.

BACKGROUND

Plaintiff Port Authority of New York and New Jersey (PA) was created by compact between the States of New York and New Jersey and, among other things, operates various bridges and tunnels between the two states. (Affirm in Supp. at 4-5, Ex. A [Complaint] ¶¶ 1-2.) Use of such PA vehicular crossings by any vehicle is conditioned upon payment of prescribed tolls. (Affirm in Supp. at 5; Complaint ¶ 13.) One method for the payment of tolls by motorists is by electronic payment known as and referred to as E-ZPass. (Id. at 5.)

Plaintiff alleges that between October 17, 2013 and through December 30, 2014, motor vehicles registered to Defendant Execuvan Inc. improperly utilized E-ZPass lanes on 374 occasions without paying the required toll. (Affirm in Supp. at 7-8; Complaint ¶ 31.) Plaintiff alleges that citations were sent to Defendant Execuvan Inc. for each violation at the address provided for in the registration for each motor vehicle committing the violation. (Complaint ¶ 32.) Plaintiff further alleges that the Defendant owes \$10,331 in unpaid tolls and \$18,700 in administrative fees for a total of \$29,031. (Affirm in Supp. at 8; Complaint ¶¶ 59, 67.)

Plaintiff alleges that Defendant Jean was the “owner, officer and/or managing agent” of Defendant Execuvan Inc. and “managed its day-to-day operations.” (Complaint ¶ 89.) Plaintiff further alleges that Defendant Jean used Defendant Execuvan’s “corporate identity as a shield against personal liability and used the corporate identity as a subterfuge for illegal acts” and thus alleges that “it is appropriate to pierce the corporate veil and impose liability on Harrison Jean.” (*Id.* ¶¶ 90-97.) Plaintiff further alleges that discovery will probably reveal evidence to support piercing the corporate veil. (*Id.* ¶ 96.)

In a decision dated April 17, 2017 (NYSCEF Doc. No. 17), this Court granted in part and denied in part a prior motion for a default judgment by Plaintiff (Seq. 001). This Court granted the branch of the motion as against Defendant Harrison Jean, and directed an inquest on damages. The Court denied the motion for a default judgment as against Defendant Execuvan Inc. because Plaintiff failed to provide an affidavit of a second mailing of the summons and complaint to Defendant Execuvan Inc. – although the Court found that Plaintiff had provided proof of adequate service of the summons and complaint on Defendant Execuvan Inc. pursuant to BLC 306.

Plaintiff brought a subsequent motion for entry of a default judgment as against Defendant Execuvan (Seq. 002), but, in a decision dated February 23, 2018 (NYSCEF Doc. No. 28), this Court denied said motion, with leave to renew, on account of Plaintiff’s failure to submit working copies of the motion pursuant to the Court’s rules.

On the instant motion, Plaintiff moves again for a default judgment as against Defendant Execuvan Inc., supplying the same evidence as submitted on its first motion for a default judgment, plus a copy of an affidavit of service for the second copy of the summons and complaint, dated July 12, 2017. (Affirm in Supp., Ex. B [Aff. of Service pursuant to CPLR 3215 [g] [4].])

## DISCUSSION

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, the plaintiff demonstrates its entitlement to a default judgment against the 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]; *Matone v Sycamore Realty Corp.*, 50 AD3d 978 [2d Dept 2008]; *Allstate Ins. Co. v Austin*, 48 AD3d 720 [2d Dept 2008]; see also *Liberty County Mut. v Avenue I Med., P.C.*, 129 AD3d 783 [2d Dept 2015].)

On the instant motion, Plaintiff presents proof of adequate service of the summons complaint on Defendant Execuvan pursuant to BCL 306. Plaintiff also presents proof of an additional mailing of the summons and complaint upon Defendant Execuvan pursuant to CPLR 3215 (g) (4). As such, Plaintiff has presented adequate proof of service on the instant motion.

In addition, Plaintiff alleges that that between October 17, 2013 and through December 30, 2014, motor vehicles registered to Defendant Execuvan Inc. improperly utilized E-ZPass lanes on 374 occasions without paying the required toll. Plaintiff further alleges that citations were sent to the registered address of Defendant Execuvan for each violation, and that that the Defendant Execuvan now owes \$10,331 in unpaid tolls and \$18,700 in administrative fees for a total of \$29,031. As such, Plaintiff submits adequate proof the facts underlying the complaint to support the instant motion for a default judgment.

As such, the instant motion for entry of a default judgment is granted as against Defendant Execuvan.

In addition, upon reviewing the instant motion and the underlying docket, it has come to the Court's attention that, on the initial motion for a default judgment (Seq. 001), the Court directed an inquest on damages as against Defendant Harrison Jean. The Judicial Hearing Officer assigned to take the inquest believed that no inquest was necessary as a sum certain was sought and further stated: "Transferred to Part 29." (Order of October 10, 2017 [NYSCEF Doc. No. 23].)

This Court amends its decision of April 17, 2017 (NYSCEF Doc. No. 17) on the first motion for a default judgment (Seq. 001) so that clerk is hereby directed to enter a judgment of a sum certain against Defendant Harrison Jean and Defendant Execuvan Inc., jointly and severally, in the amount of \$29,031.

CONCLUSION

Accordingly, it is ORDERED that Plaintiff Port Authority of New York & New Jersey's motion for entry of a default judgment, pursuant to CPLR 3215, is granted, without opposition submitted, as against Defendant Execuvan Inc.; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Plaintiff Port Authority of New York & New Jersey on the complaint and against Defendant Execuvan Inc. and Defendant Harrison Jean in the sum of \$29,031, jointly and severally, with interest at the statutory rate of 9% per annum from the date of December 31, 2014, until the date of the decision on this motion, and thereafter at the statutory rate of 9% per annum, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk; and it is further

ORDERED that this Court's decision of April 17, 2017 (NYSCEF Doc. No. 17) on the first motion for a default judgment (Seq. 001) is amended to delete its direction for an inquest and in conformity with the instant decision.

The Foregoing constitutes the ORDER and Decision of the Court.

5/10/2018  
DATE

CHECK ONE:  CASE DISPOSED  DENIED

APPLICATION:  GRANTED  SETTLE ORDER

CHECK IF APPROPRIATE:  INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT

*Robert D. Kalish*  
ROBERT D. KALISH, J.R.C.  
HON. ROBERT D. KALISH  
NON-FINAL DISPOSITION J.S.C.  
 GRANTED IN PART  OTHER  
 SUBMIT ORDER  REFERENCE