

<b>PNC Bank, N.A. v RLMcCall Capital Partners, LLC</b>
2018 NY Slip Op 30918(U)
April 11, 2018
Supreme Court, New York County
Docket Number: 656560/2017
Judge: Nancy M. Bannon
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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: Hon. Nancy Bannon PART 42  
*Justice*

PNC BANK, NATIONAL ASSOCIATION

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MOTION DATE 01/08/2018

RLMCCALL CAPITAL PARTNERS, LLC

MOTION SEQ. NO. 001

The following papers were read on this motion for a default judgment pursuant to CPLR 3215:

Notice of Motion/ Order to Show Cause — Affirmation — Affidavit(s) — Exhibits — Memorandum of Law .....	No(s). <u>1</u>
Answering Affirmation(s) — Affidavit(s) — Exhibits .....	No(s). _____

In this action for breach of contract, the plaintiff, PNC Bank, National Association ("Plaintiff"), moves for leave to enter a default judgment against the defendant, RLMcCall Capital Partners, LLC ("Defendant"), for damages in the sum of \$198,428.64, plus reasonable attorneys' fees, costs, and disbursements. No opposition is submitted. The motion is nonetheless denied without prejudice.

Where a plaintiff moves for leave to enter a default judgment, it must submit proof of the facts constituting the claim, proof of service of the summons and complaint upon the defendant, and proof of the defendant's default (see CPLR 3215 [f]; Rivera v Correction Officer L. Banks, 135 AD3d 621 [1st Dept 2016]). Although Plaintiff submits an affidavit of service referable to service of the summons and complaint upon Defendant, the affidavit fails to show that Defendant was properly served in accordance with CPLR 311-a or Limited Liability Company Law § 303.

CPLR 311-a provides that service on a limited liability company is proper where a plaintiff personally delivers the requisite documents to (1) any member of the limited liability company within the state, if management is vested in the members, (2) a manager of the limited liability company within the state, if management is vested in one or more managers, (3) an agent appointed to receive process, or (4) any other person designated to receive process.

CPLR 311-a also permits process to made upon a limited liability company pursuant to article three of the Limited Liability Company Law. Limited Liability Company Law § 303(a) provides that:

"Service of process on the secretary of state as agent of a domestic limited liability company or authorized foreign limited liability company shall be made by personally delivering to and leaving with the secretary of state or his or her deputy, or with any person authorized by the secretary of state to receive such

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

NYSCEF DOC. NO. 14

RECEIVED NYSCEF: 04/13/2018

service, at the office of the department of state in the city of Albany, duplicate copies of such process together with the statutory fee, which fee shall be a taxable disbursement. Service of process on such limited liability company shall be complete when the secretary of state is so served. The secretary of state shall promptly send one of such copies by certified mail, return receipt requested, to such limited liability company at the post office address on file in the department of state specified for that purpose."

The Plaintiff provides an affidavit of service explicitly stating that a single copy of the summons and complaint was served on the Secretary of State of Delaware. Given that Limited Liability Company Law § 303(a) provides for service on the New York Secretary of State "at the office of the department of state in the city of Albany," and that "duplicate copies" are required, it is clear that the Plaintiff's attempt at service was ineffective. Furthermore, the Plaintiff's attorney's affidavit in support of the default motion erroneously recites that service was effected pursuant to New York Business Corporation Law § 306(b), which applies to corporations, not limited liability companies such as the Defendant.

The fact that the Plaintiff's process server dispatched a second copy of the summons and complaint to the Defendant's Louisiana office by first class mail does not cure the defect, since New York state law does not authorize service on a corporation or limited liability company via mail (see, e.g., Jordan v. Forfeiture Support Assocs., 928 FSupp2d 588, 596 [E.D.N.Y. 2013]) and the Plaintiff has not established that it otherwise delivered the summons and complaint to a member or manager of the Defendant within the state, or to an agent of the Defendant or any other person designated by the Defendant to receive service of process.

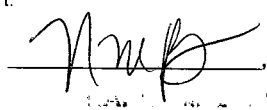
The court further notes that two of the affidavits of service and the affidavit of Blake Kenny, executed as they were outside of the State of New York, were not accompanied by a certificate of conformity (see CPLR 2309), pursuant to which an attorney or other official of the jurisdiction in which the statement is subscribed is required to attest, in writing, that the format of the affirmation or affidavit being employed conforms with the format required in that jurisdiction.

Accordingly, and upon the foregoing papers, it is

ORDERED that the Plaintiff's motion pursuant to CPLR 3215 for leave to enter a default judgment is denied, without prejudice to renewal upon proper papers.

This constitutes the Decision and Order of the court.

Dated: April 11, 2018

 JSC

- 1. Check one: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. Check as appropriate: MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER