

Press Assn., Inc. v News Broadcast Network, Inc.

2018 NY Slip Op 30966(U)

May 18, 2018

Supreme Court, New York County

Docket Number: 160251/2016

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2
Justice
INDEX NO. 160251/2016
PRESS ASSOCIATION, INC. A WHOLLY OWNED SUBSIDIARY OF THE ASSOCIATED PRESS,
Plaintiff, MOTION SEQ. NO. 001
- v -
NEWS BROADCAST NETWORK, INC.,
Defendant. DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 were read on this motion to/for DEFAULT JUDGMENT

Upon the foregoing documents, it is ordered that the motion is granted.

Plaintiff, Press Association, Inc., a wholly owned subsidiary of the Associated Press, moves, pursuant to CPLR 3215, for a default judgment against defendant News Broadcast Network, Inc. in the amount of \$37,259.65 plus costs, disbursements, and interest from November 26, 2014 due to defendant's failure to pay for services provided by plaintiff. After a review of plaintiff's motion papers, as well as the relevant statutes and case law, the motion, which is unopposed, is granted.

Plaintiff commenced this action by filing a summons and complaint on December 7, 2015. Doc. 1.1 In the complaint, plaintiff asserted claims of breach of contract and an account stated and sought damages of \$37,259.65, plus interest from November 26, 2014. Doc. 1. Service was

1 All references are to the documents filed with NYSCEF in connection with this matter

made on defendant, an authorized foreign corporation, via the Secretary of State on December 15, 2016. Doc. 4. Plaintiff mailed an additional copy of the summons and complaint to defendant pursuant to CPLR 3215(f)(4) on January 9, 2017. Doc. No. 7.

Plaintiff's attorney, Jocelyn Ruth Nager, Esq. of the firm of Frank, Frank, Goldstein & Nager, P.C., avers in an affirmation in support of the motion that on or about March 8, 2017, after defendant's time to answer or otherwise appear in this action expired, plaintiff submitted a proposed default judgment to the County Clerk's Office. Doc. 5; Doc. 12; Doc. 19. Nager states that the proposed judgment was returned by the County Clerk (Doc. No. 5) "due to issues related to the way names [were] stated on various documents." Doc. 12. She further represented that the Clerk directed plaintiff to "obtain a court order, thereby necessitating this motion." Doc. 12.

In an affidavit in support of the motion, Lisa Bulfair, Collections Manager for plaintiff, represents, in effect, that defendant News Broadcast Network, Inc. does business as News Broadcast Network and that the two entities are one and the same. Doc. 11; Doc. 14. She further states that News Broadcast Network entered into a contract with plaintiff pursuant to which "plaintiff provided use of [its] transmission network on a subscription basis." Doc. 11; Doc. 15. Bulfair also maintains that plaintiff issued invoices to defendant from September 30, 2013 until November 26, 2014 in the total amount of \$37,259.65, which bills remain unpaid.

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." 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).

Here, the affidavit of service reflects that defendant was served with the summons and complaint via the Secretary of State on December 15, 2016 and that an additional mailing of the summons and complaint was made pursuant to CPLR 3215(f)(4) on January 9, 2017. Doc. No. 7. The affirmation of plaintiff's counsel submitted in support of the motion establishes that defendant failed to appear or otherwise answer in this matter. Further, Bulfair's affidavit, as well as the invoices submitted by plaintiff, establish that defendant owes plaintiff \$37,259.65. Doc. 11; Docs. 16-17. Thus, plaintiff has established service of the summons and complaint, defendant's default, and the facts constituting the claim.

This Court notes that, although this motion for default is made well beyond one year after defendant's default, the motion is timely since plaintiff's counsel took "proceedings for the entry of judgment" within the one year period mandated by CPLR 3215(c) when she sought to have the Clerk enter judgment on March 8, 2017. Doc. 5; Doc. 19. In *US Bank N.A. v Brown*, 147 AD3d 428 (1st Dept 2017), the Appellate Division, First Department held that, within the one year period, "the party [seeking the default judgment] needs only to initiate proceedings, 'and these proceedings manifest an intent not to abandon the case' (*Brown v Rosendale Nurseries*, 259 AD2 256, 257 [1st Dept 1999], quoting 7 Weinstein-Korn-Miller, NY Civ Prac ¶ 3215.14)." The Appellate Division further stated that "[p]laintiff clearly and unequivocally indicated that it intended to continue the prosecution of th[e] case at the time it [initially sought to enter a default judgment]" and that "[s]uch a timely application 'even if unsuccessful' will not result in the dismissal of the complaint 'as abandoned pursuant to CPLR 3215(c)' (*Deutsche Bank Nat'l Trust Co. v Pascarella*, 39 Misc.3d 1227[A] [Sup Ct Suffolk Co 2013]; see also *U.S. Bank N.A. v Poku*, 118 AD3d 980, 981 [2d Dept 2014]).

Thus, plaintiff is entitled to a judgment against defendant in the amount of \$37,259.65, plus interest at the rate of 9% from November 26, 2014, plus costs and disbursements as taxed by the Clerk.


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

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff Press Association, Inc., a Wholly Owned Subsidiary of the Associated Press, against defendant News Broadcast Network, Inc., in the amount of \$37,259.65, plus interest at the rate of 9% from November 26, 2014, plus costs and disbursements as taxed by the Clerk of the Court; and it is further,

ORDERED that plaintiff, within 20 days of the posting of this order to NYSCEF, shall serve a copy of the same, with notice of entry, on defendant; and it is further

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

5/18/2018
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE