

Triborough Bridge & Tunnel Auth. v Policastro
2018 NY Slip Op 31255(U)
June 21, 2018
Supreme Court, New York County
Docket Number: 450692/2017
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTYPRESENT: HON. KATHRYN E. FREED

PART

IAS MOTION 2

Justice

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INDEX NO. 450692/2017

THE TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY

MOTION DATE 06/16/2018

Plaintiff,

MOTION SEQ. NO. 001

- v -

MICHAEL POLICASTRO, A/K/A
MICHAEL A. POLICASTRO, JR.

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9
were read on this motion to/for JUDGMENT - DEFAULT

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

This action is brought by the Triborough Bridge and Tunnel Authority ("TBTA") against defendant Michael Policastro aka Michael A. Policastro, Jr. to collect unpaid tolls, violations and late fees under the Public Authorities Law and TBTA Regulations. Plaintiff alleges that defendant, renumber pages was the owner of a vehicle or vehicles which crossed the Henry Hudson Bridge, a bridge in New York City under the TBTA's jurisdiction, and committed 615 separate toll violations from June 28, 2015 until August 13, 2016 by crossing the said bridge with an invalid E-Z Pass tag, and failed to make timely payments in response to the toll invoices sent to defendant under the TBTA's Tolls by Mail program. As a result, the TBTA alleges that defendant owes it a total of \$34,132.50, consisting of \$3382.50 in unpaid tolls, and \$30,750.00 for unpaid violations and late fees.

Plaintiff annexes to its motion a copy of the Summons and Verified Complaint with an Affidavit of Service (NYSCEF Docs. Nos. 1 and 4). The complaint is verified by Julia R. Christ, the Deputy General Counsel for the TBTA. Id. Also annexed to the Summons and Verified Complaint is a copy of the TBTA's "Violation Citation Detail" sheets listing every date on which defendant's vehicle crossed the Henry Hudson Bridge without paying the toll. Id.

The instant motion for a default judgment was filed on or about March 17, 2017. In support of the motion, plaintiff submits, inter alia, an Affidavit of Non-Military Service and an Affidavit of a second mailing of the Summons and Verified Complaint pursuant to CPLR 3215. In an Affirmation in Support, sworn to on March 2, 2018, plaintiff, through its attorney, Michael N. Zeleznock, Esq., a partner of the Law Offices of Peter C. Merani, P.C., avers that defendant's time to answer the Complaint has expired and defendant has not appeared or pleaded thereunder. Plaintiff therefore urges that it is entitled to a default judgment pursuant to CPLR 3215(a).

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." 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 R/JNJ 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).

In the case at bar, the TBTA has submitted an affidavit of service establishing that defendant was served with the Summons and Verified Complaint. The TBTA also established that it served defendant with an additional copy of the Summons and Verified Complaint pursuant to CPLR 3215 and that defendant was not in the military. The Verified Complaint sets forth the facts constituting the claim and the affirmation of the TBTA's attorney establishes that defendant has defaulted. Therefore, the TBTA has established that it is entitled to a judgment against defendant in the total sum of \$34,132.50, the amount demanded in this action.

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

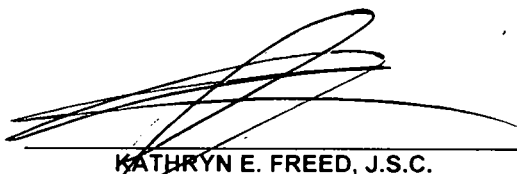
ORDERED that the motion by plaintiff Triborough Bridge and Tunnel Authority for a default judgment against defendant Michael Policastro aka Michael A. Policastro, Jr., is granted in the amount of \$34,132.50, and it is further,

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff Triborough Bridge and Tunnel Authority and against defendant Michael Policastro aka Michael A. Policastro, Jr., in the amount of \$34,132.50, and it is further

ORDERED that plaintiff Triborough Bridge and Tunnel Authority shall serve a copy of this order on defendant Michael Policastro aka Michael A. Policastro, Jr., 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.

6/21/2018
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

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CASE DISPOSED
GRANTED ☐ DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

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NON-FINAL DISPOSITION
GRANTED IN PART ☐ OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT ☐ REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: