

Strategic Funding Source, Inc. v Patrick's Antique Cars & Trucks, Inc.
2018 NY Slip Op 31940(U)
March 12, 2018
Supreme Court, New York County
Docket Number: 655597/2016
Judge: Nancy M. Bannon
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: Hon. Nancy Bannon
Justice

PART 42

STRATEGIC FUNDING SOURCE, INC.

INDEX NO. 655597/2016

- v -

MOTION DATE 1/5/18

**PATRICK'S ANTIQUE CARS AND TRUCKS,
INC. d/b/a PATRICK'S ANTIQUE CARS AND
TRUCKS, PATRICK DYKES a/k/a PATRICK H.
DYKES and MARY "DENISE" DYKES a/k/a
MARY DANISE DYKES**

MOTION SEQ. NO. 008 1

The following papers were read on this motion for leave to enter a default judgment (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). _____
Replying Affirmation — Affidavit(s) — Exhibits -----	No(s). _____

In this action to recover damages upon theories of breach of contract and breach of a guaranty, the plaintiff moves pursuant to CPLR 3215 for leave to enter a default judgment against all defendants on the first and third causes of action. The motion is granted, as the plaintiff has submitted proof of service of the summons and complaint upon the defendants, proof of the facts constituting those claims, and proof of the defendants' failure to answer the complaint or otherwise appear in this action (see CPLR 3215[f]; Atlantic Cas. Ins. Co. v RJNJ Services, Inc. 89 AD3d 649 [2nd Dept 2011]).

The plaintiff's proof on this motion includes a copy of the subject merchant cash advance agreement for the purchase and sale of future receivables, showing that defendant Patrick's Antique Cars and Trucks, Inc. doing business as Patrick's Antique Cars and Trucks, entered into an agreement with the plaintiff on July 27, 2015, pursuant to which it agreed to sell the plaintiff \$65,250.00 of its future receivables in consideration of a present cash payment of \$45,000.00. The agreement reveals that defendants Patrick Dykes and Mary Dykes each personally guaranteed the company's obligations under the agreement, and that the defendants would become obligated for certain expenses, designated fees, and liquidated damages were they to default under the agreement. The plaintiff further submitted an affidavit of David Wolfson, its vice president of risk management and asset recovery, explaining that, in accordance with the agreements, the defendants were obligated to employ a primary bank account in which it was to deposit its receivables so that the plaintiff would be able to assess the status of the company's receivables and retain an agreed upon percentage thereof on an ongoing basis, but that the defendants stopped depositing all of their receivables into that account on

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

or before June 29, 2016. In his affidavit, the vice president also asserted that the defendants had delivered only \$26,118.00 of the \$62,250.00 in receivables purchased, leaving a balance of \$36,132.00 and that despite due demand, the defendants have failed to perform under the agreement. See 4 USS, LLC v DSW MS, LLC, 120 AD3d 1049, 1051 (1st Dept 2014). The plaintiff seeks an additional \$7,500.00 in default and blocked account change fees as per Appendix A of the agreement. The plaintiff has waived its claim for attorneys fees entirely and reduced its claim for bank debit fees from \$495.00 to \$200.00. The plaintiff has discontinued its second cause of action for an account stated.

By this proof, the plaintiff has met its burden on the cause of action for breach of contract by the principal to the agreement, Patrick's Antique Cars and Trucks, Inc., as well as the defendant guarantors since the proof establishes, *prima facie*, (1) the existence of a contract, (2) the plaintiff's performance under the contract; (3) the defendants' breach of that contract, and (4) resulting damages. See Morpheus Capital Advisors LLC v UBS AG, 105 AD3d 145 (1st Dept. 2013). Where a guaranty is clear and unambiguous on its face and, by its language, absolute and unconditional, the signer is conclusively bound by its terms absent a showing of fraud, duress or other wrongful act in its inducement." Citibank, N.A. v Uri Schwartz & Sons Diamonds Ltd., 97 AD3d 444, 446-447 (1st Dept. 2012), quoting National Westminster Bank USA v Sardi's Inc., 174 AD2d 470, 471 (1991). The terms of the subject guaranty are clear, unambiguous, absolute and unconditional and, having defaulted, the defendants have not raised any triable issue as to fraud, duress or any other wrongful conduct by the plaintiff in regard to the agreement.

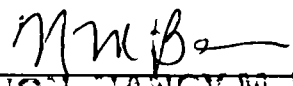
Accordingly, it is,

ORDERED that the plaintiff's motion pursuant to CPLR 3215 for leave to enter a default judgment on the first and third causes of action of the complaint is granted, without opposition, and it is further,

ORDERED that the Clerk shall enter judgment in favor of the plaintiff and against the defendants, jointly and severally, in the sum of \$43,832.00, plus costs and statutory interest from June 29, 2016.

This constitutes the Decision and Order of the court.

Dated: March 12, 2018


HON. NANCY M. BANNON JSC

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