

**Lewis v Mohan**

2018 NY Slip Op 31958(U)

August 14, 2018

Supreme Court, New York County

Docket Number: 151305/2018

Judge: Robert D. Kalish

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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. ROBERT D. KALISH PART IAS MOTION 29EFM

*Justice*

-----X INDEX NO. 151305/2018

GWEN LEWIS (f.k.a. Mohan),

MOTION DATE 03/20/2018

Plaintiff,

MOTION SEQ. NO. 001

- v -

JAMES R. MOHAN,

Defendant.

**DECISION AND ORDER**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2  
were read on this motion to/for JUDGMENT - MONEY

Upon the foregoing documents and after hearing oral argument, it is ORDERED that the instant motion by Plaintiff Gwen Lewis (f/k/a Mohan) for summary judgment in lieu of complaint, pursuant to CPLR 3213, is granted without opposition, for the reasons stated herein:

**BACKGROUND**

Plaintiff brings the instant action by motion for summary judgment in lieu of complaint, with the instant motion papers having been filed electronically on February 12, 2018. On the instant motion, Plaintiff seeks an order from the Court granting Plaintiff summary judgment and directing the County Clerk to enter a money judgment in favor of Plaintiff and against Defendant James R. Mohan in the total combined sum of \$43,469.06, based on a money judgment for child support arrears rendered in the Court of Common Pleas of Allegheny County, Family Division, in the Commonwealth of Pennsylvania, dated October 30, 2017 (“the Pennsylvania Judgment”).

Plaintiff submits an affidavit in support of the instant motion, to which a copy of the Pennsylvania Judgment is attached as Exhibit A. Annexed to the Pennsylvania Judgment are certifications of authenticity from Presiding Judge and Director of the Department of Court Records of the Court of Common Pleas of Allegheny County, Pennsylvania. Said Pennsylvania Judgment reflects the combined sum of two prior judgments from that court: a January 19, 2012

judgment for \$11,795.56 (Ex. C) and July 28, 2017 judgment for \$31,673.50 (Ex. B). On the Pennsylvania Judgment, the following appears handwritten: "After a ten minute period, no one appeared to oppose this motion."

Plaintiff states that Pennsylvania Judgment "is unsatisfied in full and there remains unpaid thereon the sum of forty-three thousand four hundred sixty-nine dollars and six cents (\$43,469.06)." (Plaintiff Aff. ¶ 7.)

Plaintiff also submits an affidavit of service which states that on February 15, 2018, the instant motion was served on Defendant, pursuant CPLR 308 (2), by delivering said papers to a person of suitable age and discretion at Plaintiff's actual place of business, and that a copy of said papers were sent to Plaintiff's actual place of business by first class mail in an envelope marked "Personal and Confidential."

On June 7, 2018, this Court e-filed a court notice scheduling this motion for oral argument on August 14, 2018 at 2:30 PM. Plaintiff submits an affidavit, dated July 10, 2018, from a process server stating that, on June 12, 2018, at 12:50 PM, he attempted to serve a copy of the court notice on Defendant at Defendant's place of business, but that he was informed by the receptionist that Defendant was not in the office and "is rarely ever in the office." The process server further states that "[a]fter due diligence, I was unable to personally serve James R. Mohan with the named documents at the given address."

## DISCUSSION

CPLR 3213 provides, "[w]hen an action is based upon an instrument for the payment of money only or upon any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint." The purpose of this rule is "to provide quick relief on documentary claims so presumptively meritorious that a formal complaint is superfluous, and even the delay incident upon waiting for an answer and then moving for summary judgment is needless." (*Cooperative Centrale Raiffeisen-Boerenleenbank, B.A. v Navarra*, 25 NY3d 485, 491-91 [2015], citing *Weissman v Sinorm Deli*, 88 NY2d 437, 443 [1996].)

As a preliminary matter, the Court finds that Defendant was served with the process pursuant CPLR 308 (2). That Plaintiff's process server was unable to serve Defendant with a copy this court's notice of oral argument is of no moment, as a party is under no obligation to serve a defaulting party with interlocutory

papers. (David D. Siegel, McKinney's Commentary C3215:2 [2012 Supp.] ["When a party's responding time expires without an appearance, the party is in default and need not be served with further papers."].)

Furthermore, this Court finds that the underlying Pennsylvania Judgment has been properly authenticated, pursuant to CPLR 4540, as a valid judgment from this sister state court, and thereby entitled to full faith and credit. (*Progressive Intern. Co. v Varun Cont., Ltd.*, 16 AD3d 476, 476–77 [2d Dept 2005] [default judgment can be afforded full faith and credit where plaintiff proceeds to enforce said judgment by plenary action]; Patrick C. Reilley, McKinney's Commentary C5401:2 ["[A] judgment, decree or order that has been obtained by default or confession of judgment--i.e., where there was no contest in the foreign jurisdiction--may still be given full faith and credit in New York. However, the party seeking recognition will need to pursue that through a plenary action; or a Motion for Summary Judgment in Lieu of Complaint under CPLR 3213."])

In addition, Plaintiff states by sworn affidavit that Pennsylvania Judgment remains unsatisfied. As such, Plaintiff has satisfied her prima facie burden for entitlement to summary judgment in lieu of complaint on this unopposed motion. (*Seaman-Andwall Corp. v Wright Mach. Corp.*, 31 AD2d 136, 137 [1st Dept 1968], *affd sub nom. Seaman-Andwall Corp v Wright Mach. Corp*, 29 NY2d 617 [1971].)<sup>1</sup>

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<sup>1</sup> The Court notes that at oral argument, Plaintiff's counsel waived any claim for pre and post-judgment interest.

CONCLUSION

Accordingly, it is

ORDERED that the motion by Plaintiff Gwen Lewis (f/k/a Mohan) for summary judgment in lieu of complaint, pursuant to CPLR 3213, is granted without opposition; and it is further

ORDERED that, within 20 days of entry, Plaintiffs shall serve a copy of this order with notice of entry upon Defendant and upon the Clerk, who is directed to enter judgment in favor of Plaintiff and against Defendant in the sum of \$43,469.06, with no interest, together with costs and disbursements, as taxed by the Clerk upon submission of an appropriate bill of costs.

The foregoing constitutes the decision and order of the Court.

8/14/2018  
DATE



HON. ROBERT D. KALISH  
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