

**SLM Private Credit Student Loan Trust 2007-A v
Delaria**

2019 NY Slip Op 30284(U)

February 5, 2019

Supreme Court, New York County

Docket Number: 156948/2013

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 2EFM

Justice

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INDEX NO. 156948/2013

SLM PRIVATE CREDIT STUDENT LOAN TRUST 2007-A,

Plaintiff,

MOTION SEQ. NO. 001

- v -

MOLLIE DELARIA,

Defendant

DECISION AND ORDER

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The following papers, numbered 1-2, were read on this application to/for Default Judgment

Notice of Motion/ Petition/ OSC - Affidavits - Exhibits No(s) 1, 2 (Exs. A-D)

Answering Affidavits - Exhibits No(s) N/A

Replying No(s) _____

Upon the foregoing documents, it is ordered that the motion is granted without opposition.

Plaintiff moves for entry of a judgment against defendant Mollie Delaria, who defaulted by failing to make any payments on a Settlement Stipulation which she entered into on January 29, 2018. NYSCEF Doc. No. 13.

Plaintiff SLM Private Credit Student Loan Trust 2007-A loaned money to defendant in the amount of \$36,506.97. After the commencement of the captioned action, defendant and plaintiff entered into a Settlement Stipulation, dated and executed on January 29, 2018. Doc. No. 9. Pursuant to the Settlement, defendant promised to pay plaintiff the amount of \$18,000.00 at

the rate of \$125.00 per month beginning on August 15, 2018 and monthly thereafter until the amount was fully paid.

Plaintiff now alleges, through the Affirmation of its attorney, Edward J. Damsky, Esq., an attorney associated with the Law Firm of Foster & Garbus, LLP, that defendant failed to make any payments on the Settlement Stipulation. Doc. No. 11, ¶¶ 4,5. Damsky further alleges, that because defendant is now in breach of the Settlement Stipulation, plaintiff can now sue defendant, pursuant to the terms of that agreement, for the original loan amount. Docs. No. 9 or 13, ¶4.

Plaintiff annexes a Notice of Default mailed to defendant plus an affidavit of service of said default. Doc. No. 14. Plaintiff, by its attorney, further alleges that no payment has been received and that defendant has failed to cure her default. Plaintiff also annexes a Non-Military Affirmation to its papers. Doc. No. 15. Plaintiff, based on the foregoing and pursuant to the Settlement, seeks an order granting it judgment in the sum of \$36,506.97 plus the costs and disbursements of this action.

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). 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 N.Y.2d 63 (2003).

Plaintiff has set forth proof of the facts constituting the claim, i.e., the Affirmation of its attorney attesting that defendant breached the executed Settlement Stipulation by her failure to pay the agreed upon amounts.

Plaintiff has additionally submitted proof of service and compliance with CPLR 3215. Thus, plaintiff has established its entitlement to a default judgment against defendant.

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


ORDERED that the motion by plaintiff SLM Private Credit Student Loan Trust 2007-A. for a default judgment for the breach of the Settlement Stipulation by defendant Mollie Delaria is granted; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff SLM Private Credit Student Loan Trust 2007-A and against defendant Mollie Delaria in the amount of \$36,506.97, together with costs and disbursements to be taxed by the Clerk; 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.

2/5/2019
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE