

JHAC LLC v Advance Entertainment, LLC
2019 NY Slip Op 32886(U)
September 27, 2019
Supreme Court, New York County
Docket Number: 654948/2018
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ANDREA MASLEY PART IAS MOTION 48EFM

Justice

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INDEX NO. 654948/2018

JHAC LLC,

MOTION DATE 04/30/2019

Plaintiff,

MOTION SEQ. NO. 004

- v -

ADVANCE ENTERTAINMENT, LLC, JOSEPH MELI, RESET PARTNERS, LLC, HARSH PADIA, MOSTLY DUNE HOLDINGS, LLC, JASON LIEBMAN, KID SHELLEEN, LLC, and KARL ANDREN

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 162 were read on this motion to/for JUDGMENT - DEFAULT

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

Plaintiff moves, pursuant to CPLR 3215, for a default judgment against defendants Advance Entertainment LLC (AE) and Joseph Meli (together, defendants) on the basis that they failed to answer, respond to, or otherwise appear for the March 12, 2019 first amended complaint (FAC) (NYSCEF 127 [FAC]). Plaintiff seeks a default judgment against defendants for only its fraud cause of action (see NYSCEF 139 at 6) and requests compensatory damages, pre-judgment interest, and punitive damages. The motion is unopposed.

"On a motion for a default judgment under CPLR 3215 based upon a failure to answer the complaint, a plaintiff demonstrates entitlement to a default judgment against a defendant by submitting: (1) proof of service of the summons and complaint; (2) proof of the facts constituting its claim; and (3) proof of the defendant's default in answering or appearing" (Medina v Sheng Hui

Realty LLC, 2018 WL 2136441, *6-7 [Sup Ct, NY County 2018] [citations omitted]). "CPLR 3215 (f) requires that an applicant for a default judgment file proof by affidavit made by the [moving] party of the facts constituting the claim" (see *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70 [2003]). Plaintiff has met its burden with respect to the fraud claim and the motion is granted in part.

First, plaintiff provides proof of service of the summons and original complaint as to both defendants (NYSCEF 122-123 [proof of original service]; see also NYSCEF 125-126 [proof of subsequent service on defendants following court order]). Plaintiff further provides proof of service of the FAC upon both defendants (NYSCEF 128-129), as well as service of this motion for a default judgment and the related papers/exhibits in support (NYSCEF 140-141).

Next, plaintiff adequately states a viable cause of action for fraud against defendants in its FAC, and proof of the facts constituting the fraud claim against the defendants are set forth in the party affidavit of Arthur Cohen, dated April 24, 2019, and the annexed exhibit (NYSCEF 136-138). The motion is further supported by the affirmation and exhibits of plaintiff's counsel (NYSCEF 120-135).

Plaintiff alleges that defendants misrepresented that AE had a contract with nonparty Q Prime Management, LLC/Ride the Lightning LLC (Q Prime) to purchase blocks of tickets to 2017-2018 performances of Metallica, a popular band (QP Agreement) (NYSCEF 136, ¶¶ 3-5). The QP Agreement was presented to plaintiff through a "Sandman Transaction Diagram" (Diagram), sent "at Meli's direction" to a representative of plaintiff by Daniel Miller of nonparty Experience Capital LLC (*id.* ¶ 8). Plaintiff asserts that the Diagram falsely represented to plaintiff that AE had, through the QP Agreement, the option to purchase the tickets, that AE would assign the QP Agreement to nonparty Sandman Funding LLC (SF LLC) in return for an ownership interest in SF LLC, and that SF LLC would obtain the tickets from Q Prime (*id.* ¶ 9). Plaintiff further asserts that the Diagram

misrepresented that the tickets would be purchased and then resold on the secondary market by DTI Management, LLC (DTI), an established business in the ticket resale market of which Meli was an executive and which was affiliated AE (*id.*). The Diagram also misrepresented that all net profits would be remitted to SF LLC; plaintiff states that the purpose of sending the Diagram was to falsely represent how the fraudulent investment opportunity would operate, to induce plaintiff's reliance, and, ultimately, to secure plaintiff's investment in the fictional venture (*id.* ¶¶ 9-10).

Plaintiff further alleges that Miller's January 11, 2017 email, sent at Meli's direction, contained an analysis of the false investment opportunity demonstrated that it would generate substantial returns, especially because the tickets would be resold through DTI's established online platform (*id.* ¶¶ 11-12, 15-16). On January 12, 2017, Meli provided plaintiff with a copy of the QP Agreement, purportedly executed between Q Prime and AE, which repeated many of the above misrepresentations regarding the ticket transaction with Q Prime and resale through DTI (*id.* ¶ 17). Plaintiff alleges, however, that the QP Agreement was "entirely fabricated" by defendants and that no valid QP Agreement existed (*id.* ¶ 18). Induced by and relying on defendants' allegedly false representations, plaintiff asserts that it wired \$2 million to AE on January 12, 2017 (*id.* ¶¶ 19-20; see NYSCEF 137 [wire transfer authorization letter]).

Plaintiff alleged that the transferred funds were not invested in ticket sales but, instead, were transferred by defendants to "cover their debts," as demonstrated by the declaration of FBI Special Agent Sweeney who, in connection with the criminal action against Meli, forensically traced the funds, including plaintiff's \$2 million, from defendants' bank accounts to wire transfers made by defendants' to various other accounts a few days after plaintiff's funds were sent (NYSCEF 136, ¶¶ 22-24; see NYSCEF 138 [Sweeney declaration]). In sum, plaintiff asserts that defendants intentionally misrepresented to plaintiff the existence of the QP Agreement and its substance,

knowing the falsity of the representations, in order to induce plaintiff's reliance and coerce plaintiff to transfer funds to AE (NYSCEF 126, ¶¶ 26-30). As a result, plaintiff's \$2 million investment was used by defendants for unrelated purposes, and plaintiff has not received either the benefit of its investment deal or the return of the \$2 million (*id.* ¶¶ 31-34).

Plaintiff's attorney asserts that no answer or other response was timely interposed by defendant to the FAC (NYSCEF 120).

Thus, the motion is granted, in part, and plaintiff is awarded a default judgment in the amount of \$2 million with pre-judgment interest running from January 12, 2017, the date of the wire transfer to AE.

Finally, the court further declines to award plaintiff punitive damages in connection with the fraud cause of action and that prong of the motion is denied. While punitive damages may be awarded for tort claims, including fraud, on a motion for a default judgment, plaintiff does not contend that punitive damages have been found appropriate in comparable cases or were awarded for similar fraudulent conduct upon a default, provides no basis or explanation for the \$10 million amount of punitive damages requested, and cites no cases in which similar figures were awarded to penalize a party under circumstances such as those presented on this motion.

Accordingly, it is

ORDERED that plaintiff's motion for a default judgment, motion sequence number 004, is granted in part and the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendants Advance Entertainment, LLC and Joseph Meli in the sum of \$2,000,000, together with interest at the statutory rate from January 12, 2017, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate

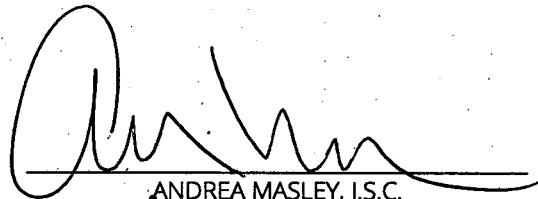
bill of costs, for a total sum of \$ _____, and plaintiff shall have execution thereof; and it is further

ORDERED that the motion is denied in all other respects; and it is further

ORDERED that the first cause of action for fraud is severed and the remainder of the action continues; and it is further

ORDERED that the parties shall appear for a status conference on December 17, 2019 at 10 am pm.

9/27/19
DATE


ANDREA MASLEY, J.S.C.
HON. ANDREA MASLEY

CHECK ONE:

- CASE DISPOSED
- GRANTED DENIED
- SETTLE ORDER
- INCLUDES TRANSFER/REASSIGN

APPLICATION:

CHECK IF APPROPRIATE:

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