

NY Metro Radio Korea Inc. v Gahee An

2019 NY Slip Op 32941(U)

October 3, 2019

Supreme Court, New York County

Docket Number: 656725/2017

Judge: Joel M. Cohen

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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. JOEL M. COHEN PART IAS MOTION 3EFM

Justice

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NY METRO RADIO KOREA INC.,

Plaintiff,

- v -

GAHEE AN, JAE KYOUNG KIM, EDITED BY ERIC, INC.,
SG INTERNATIONAL, INC.

Defendant.

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INDEX NO. 656725/2017

MOTION DATE N/A

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76

were read on this motion for DEFAULT JUDGMENT.

Upon the foregoing documents:

Plaintiff NY Metro Radio Korea moves for a default judgment, pursuant to CPLR § 3215, against Defendant Gahee An for failure to timely appear, answer, or otherwise move with respect to the complaint.¹ An appearance on this motion was scheduled for September 17, 2019 and Defendant failed to appear. For the reasons described below, the motion for default judgment is granted.

Plaintiff has submitted un rebutted evidence demonstrating compliance with the requirements of CPLR § 3215. Therefore, Plaintiff’s motion for default judgment is granted as to liability. The relief sought for claims four and five is for a sum certain of \$93,400. As such, Plaintiff’s motion for default judgment is granted as to damages related to those claims.

¹ Through a July 18, 2018 Decision and Order (Bransten, J.) Plaintiff obtained a default judgment against Defendants Jae Kyoung Kim, Edited By Eric, Inc., and SG International, Inc.

The first, second, third and sixth causes of action do not request a sum certain and, therefore, shall be referred to a Judicial Hearing Officer (“JHO”) for determination as to the amount of damages.

Plaintiff also seeks attorneys’ fees. Claims for attorneys’ fees “are not ordinarily amenable to characterization as claims for ‘sums certain.’” *Arent Fox Kintner Plotkin & Kahn v. Lurzer GmbH*, 297 A.D.2d 590 (1st Dep’t 2002); *Reynolds Secs. v. Underwriters Bank & Trust Co.*, 44 N.Y.2d 568 at 572 (1978) (holding that to be considered a “sum certain” there can be no dispute as to the amount due). Therefore, because attorneys’ fees are not treated by courts as a sum certain, Plaintiff shall be directed to an Inquest to determine the issue of attorneys’ fees.

Defendant Gahee An may seek a vacatur of the instant default judgment if he can satisfy the requirements of CPLR § 5015, CPLR § 317, or any other relevant law.

ORDERED that Plaintiff’s Motion for a Default Judgment against Defendant Gahee An is Granted, and the Clerk of the Court is directed to enter a judgment in favor of Plaintiff and against Defendant Gahee An, jointly and severally with Defendants Jae Kyoung Kim, Edited By Eric, Inc., and SG International, Inc., for the amount alleged in the fourth and fifth causes of action in the complaint, \$93,400, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs, relating to Plaintiff’s; and it is further

ORDERED that all parties shall appear for an inquest before a JHO to determine the amount of damages Defendant Gahee An owes Plaintiff with respect to the first, second, third and sixth causes of action; and it is further

ORDERED that Plaintiff’s request for attorneys’ fees is also referred to a JHO or Special Referee to hear and determine; and it is further

ORDERED that the powers of the JHO/Special Referee to determine shall not be limited further than as set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119 M, 646-386-3028 or spref@courts.state.ny.us) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this Court at www.nycourts.gov/supctmanh at the "Local Rules" link), shall assign this matter to an available Special Referee to determine as specified above; and it is further

ORDERED that plaintiff's counsel shall serve a copy of this order with notice of entry on defendant within five days and that counsel for plaintiff shall, after thirty days from service of those papers, submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (which can be accessed at <http://www.nycourts.gov/courts/ljd/supctmanh/refpart-infosheet-10-09.pdf>) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR § 4318) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and that the parties shall appear for the reference hearing, including with all such witnesses and evidence as they may seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referee's Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue specified above shall proceed from day to day until completion.

This constitutes the Decision and Order of the Court.

10/3/2019
DATE


HON. JOEL M. COHEN, J.S.C.

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