

TD Bank, N.A. v CC English, Inc.

2019 NY Slip Op 33037(U)

October 10, 2019

Supreme Court, New York County

Docket Number: 655202/2018

Judge: Melissa A. Crane

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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: MELISSA A. CRANE
Justice
HON. MELISSA CRANE

PART 15

TD BANK, N.A.,
Plaintiff

INDEX NO. 655202/2018
MOTION DATE _____
MOTION SEQ. NO. 002
MOTION CAL. NO. _____

- v -

CC ENGLISH, INC. and
KOT MAN CHENG,
Defendants

The following papers, numbered _ to _ were read on this motion to/for _____.

	<u>PAPERS NUMBERED</u>
Notice of Motion/Order to Show Cause — Affidavits — Exhibits ...	_____
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____
CROSS-MOTION: YES NO	

Plaintiff moves pursuant to CPLR § 3215 to enter a default judgment against the defendant, CC ENGLISH, INC, only.¹ Plaintiff demonstrates *prima facie* that defendant borrower owes plaintiff pursuant to the terms of a promissory note. Plaintiff has submitted proof of service of the summons with notice, proof of the facts constituting the claim, and proof of defendant CC ENGLISH, INC’s failure to answer or appear in this action. Defendant CC ENGLISH, INC has not answered, or appeared in this action, and has not opposed plaintiff’s default motion.

Accordingly, it is

ORDERED that plaintiff’s motion for default judgment against defendant, CC ENGLISH, INC, only, is granted without opposition; and it is further

¹ Plaintiff did not move for a default judgment against the individual defendant Kot Man Cheng. In motion sequence 001, plaintiff moved to extend time to serve Cheng, and to serve Cheng by publication. Judge Crane granted that motion on July 23, 2019. At the time plaintiff made this default motion (motion sequence 002), service against Cheng was not yet complete. Under CPLR 316(c), service shall be complete on the twenty-first day after the first publication.

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

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff in the sum of \$35,000.00 with interest at a rate of 9.74% from June 22, 2018, until entry of judgment, together with costs and disbursements, as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED for judgment against defendant, CC ENGLISH, INC, only, restraining and enjoining CC English, Inc., its agents, employees, accountants, attorneys and such other persons acting at the direction of or on behalf of CC English, Inc., from selling, moving, liquidating, disposing or permitting the removal of the Collateral; and it is further

ORDERED for judgment against defendant, CC ENGLISH, INC, only, compelling CC English, Inc., its agents, employees, accountants, attorneys and such other persons acting at the direction of or on behalf of CC English, Inc. to segregate in an account controlled by TD Bank, N.A. all proceeds of accounts receivable; and it is further

ORDERED for judgment against defendant, CC ENGLISH, INC, only, compelling CC English, Inc., its agents, employees, accountants, attorneys and such other persons acting at the direction of or on behalf of CC English, Inc., to turn over to TD Bank, N.A., in its original form, all payments of accounts receivable now and hereafter received; and it is further

ORDERED for judgment against defendant, CC ENGLISH, INC, only, compelling CC English, Inc., its agents, employees, accountants, attorneys and such other persons acting at the direction of or on behalf of CC English, Inc., to turn over to TD Bank, N.A., a statement setting forth the names and addresses of CC English, Inc.'s account debtors and the amount owed by each of them; and it is further

ORDERED for judgment against defendant, CC ENGLISH, INC, only, compelling CC English, Inc., its agents, employees, accountants, attorneys and such other persons acting at the direction of or on behalf of CC English, Inc., to assemble and make the Collateral available or

deliver the Collateral to TD Bank, N.A. for inspection, appraisal and sale or other disposition pursuant to the Uniform Commercial Code in order to satisfy the amounts due to TD Bank, N.A.; and it is further

ORDERED for judgment against defendant, CC ENGLISH, INC, only, authorizing TD Bank, N.A. to sell, liquidate, dispose of or retain the Collateral in a commercially reasonable manner, with the proceeds from same being applied first to the costs of such sale or other disposition, including reasonable attorneys' fees, and then in reduction of the amounts due TD Bank, N.A. from CC English, Inc.; and it is further

ORDERED for judgment against defendant, CC ENGLISH, INC, only, ordering that the sheriff of any county of the State of New York wherein the Collateral is found, be directed to seize the Collateral at issue, and for the purpose, if the Collateral is not delivered to him or her, to break open, enter, and search for the Collateral in the place specified, and to hold the Collateral pursuant to C.P.L.R. § 7101, et al.; and it is further

ORDERED for judgment against defendant, CC ENGLISH, INC, only, issuing a Writ of Replevin directed to the Sheriff or other lawfully authorized officers of New York County where the Collateral may be found and directing that such Sheriff or other officers to seize and/or take immediate possession of the Collateral and deliver same to T.D. Bank, N.A., the court- appointed receiver or other court- appointed agent, as this Court may direct; and it is further

ORDERED for judgment against defendant, CC ENGLISH, INC, only, barring and foreclosing CC English, Inc. from all equity of redemption in and to the Collateral; and it is further

ORDERED for judgment against defendant, CC ENGLISH, INC, only, directing that to the extent any of such Collateral has already been sold or otherwise liquidated, CC English, Inc.

account for the proceeds derived from such sale or liquidation and remit such proceeds to TD

Bank, N.A.; and it is further

ORDERED that the Clerk is directed to award the plaintiff attorney's fees in the sum of \$2,587.50.

DATED: 10-10, 2019



MELISSA A. CRANE, J.S.C

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
Check if appropriate: DO NOT POST REFERENCE SETTLE ORDER SUBMIT ORDER
 FIDUCIARY APPOINTMENT

HON. MELISSA A. CRANE
J.S.C.