

English v McGrath

2020 NY Slip Op 30431(U)

February 11, 2020

Supreme Court, New York County

Docket Number: 653168/2019

Judge: Debra A. James

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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. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

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INDEX NO. 653168/2019

MICHAEL ENGLISH,

MOTION DATE 02/11/2020

Plaintiff,

MOTION SEQ. NO. 001

- v -

PATRICK MCGRATH,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 8, 9, 10, 11 were read on this motion to/for SUMMARY JUDGMENT IN LIEU OF COMPLAINT

ORDER

Upon the foregoing documents, it is

ORDERED and ADJUDGED that the plaintiff's motion for summary judgment in lieu of complaint herein pursuant to CPLR 3213 is granted on default, and the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendant in the sum of \$ 69,000.00, plus late fees in the amount of \$3,450.00, with interest at the statutory rate from the date of May 23, 2019, until the date of the decision on this motion, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that that portion of the plaintiff's action that seeks the recovery of attorney's fees is severed and the issue of the amount of reasonable attorney's fees that plaintiff may recover against the defendant is referred to a Special Referee to hear and report; and it is further

ORDERED that counsel for the plaintiff shall, within 30 days from the date of this order, serve a copy of this order with notice of entry, together with a completed Information Sheet,¹ upon defense counsel and upon the Special Referee Clerk in the General Clerk's Office (Room 119), who is directed to place this matter on the calendar of the Special Referee's Part for the earliest convenient date; and it is further

ORDERED that such service upon the Special Referee Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts.

¹ Available on the Court's website at www.nycourts.gov/supctmanh under the "References" link on the navigation bar.

DECISION

In this action seeking damages for default upon a promissory note, plaintiff MICHAEL ENGLISH moves for summary judgment in lieu of complaint under CPLR 3213 against defendant PATRICK M. MCGRATH. Plaintiff submits a copy of the promissory note signed by the defendant, in addition to an affidavit setting forth defendant's failure to pay thereupon. Plaintiff also submits proof of service of process, i.e., this application upon the defendant.

The court determines that this action "is based upon an instrument for the payment of money only" pursuant to CPLR 3213 and that the other requirements of the statute have been met. Therefore, plaintiff's motion shall be granted on default as defendant has not submitted papers on the motion.

Paragraph 7 of the note, entitled "Costs and Expenses", provides, in pertinent part,

"Following the occurrence of any Event of Default, Borrower shall pay upon demand all reasonable costs and expenses (including all reasonable amounts paid to attorneys...), incurred by Lender in the exercise of any of its rights, remedies or powers hereunder".

The amount of reasonable attorney's fees of which defendant shall reimburse plaintiff must be decided at an evidentiary hearing.

2/11/2020
DATE

Debra A. James
DEBRA A. JAMES, 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
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input checked="" type="checkbox"/>	REFERENCE