

**Ballybeg Entertainment LLC v Advance  
Entertainment LLC**

2020 NY Slip Op 30498(U)

February 18, 2020

Supreme Court, New York County

Docket Number: 655482/2018

Judge: Andrea Masley

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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. ANDREA MASLEY

PART

IAS MOTION 48EFM

Justice

-----X

INDEX NO. 655482/2018

BALLYBEG ENTERTAINMENT LLC,

MOTION DATE

Plaintiff,

MOTION SEQ. NO. 003

- v -

ADVANCE ENTERTAINMENT LLC, JOSEPH MELI, KID SHELLEEN, LLC,

DECISION + ORDER ON MOTION

Defendants.

-----X

MASLEY, J.:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 122

were read on this motion to/for

JUDGMENT - DEFAULT

Upon the foregoing documents, 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) for failure to timely respond to plaintiff's March 12, 2018 first amended verified complaint (FAC) (NYSCEF 110). The motion seeks a default judgment as to only the fraud claim against defendants (see id. ¶¶ 46-54 [fraud claim]; NYSCEF 118 at 8 [pl's mem]). To date, defendants have not answered, responded, or otherwise appeared.

"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. In support of this motion, plaintiff provides proof of service of the summons and FAC upon both defendants (NYSCEF 116-117), as well as service of this motion for a default judgment and the related papers/exhibits in support (NYSCEF 122). Plaintiff adequately states a viable cause of action for fraud against defendants, and proof of the facts constituting the fraud claim against the defendants are set forth in the FAC, verified by Jeremiah Harris, plaintiff's managing member (NYSCEF 109 at 20), and the exhibits annexed to counsel's affidavit (NYSCEF 109-117). Further, plaintiff's attorney asserts that defendants have not appeared or responded to the FAC (NYSCEF 109, ¶ 2 [pl's counsel's aff]).

"The elements of fraud are a material misrepresentation of fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff, and damages" (*Art Capital Group, LLC v Neuhaus*, 70 AD3d 605, 607 [1st Dept. 2010]), and the factual allegations supporting a fraud claim must be stated with particularity under CPLR 3016 (b).

Plaintiff claims that defendants executed a scheme to defraud plaintiff of \$500,000 (NYSCEF 110, ¶¶ 1-5, 23-41). Specifically, Meli presented plaintiff's CEO and managing member, Harris, an offer to invest in defendants' business of purchasing and reselling live-event tickets. In December 2016, Meli pitched two investment opportunities to plaintiff involving (1) tickets for the upcoming tour of a music group, Metallica, and (2) a series of events to occur at the Nassau Coliseum venue (together, Investments) (*id.* ¶¶ 35-36). On January 25, 2017, plaintiff executed an agreement with AE by which plaintiff would invest \$500,000 for the purchase of ticket blocks for the Investments, in exchange for 10% annualized return on the investment from proceeds of the ticket sales (*id.* ¶ 36; see *id.* at 22-30 [FAC exs. A-C: funding agreement, promissory note, and bank statement]). In the

funding agreement executed by plaintiff and AE, supported by the promissory note guaranteed by Meli (*id.* at 22-28), AE knowingly misrepresented to plaintiff that the invested funds would be used for the Investments, solely, but plaintiff learned that AE wired the \$500,000 to defendant Kid Shelleen, LLC the day after plaintiff sent the money (*id.* ¶¶ 36-38). Plaintiff also learned that Meli never purchased, or intended to purchase, tickets in connection with the Investments and plaintiff has, ultimately, received no return of the funds it sent or the promised profits from the Investments (*id.* ¶¶ 40-41).

Accordingly, plaintiff has stated a claim for fraud against defendants in that defendants knowingly misrepresented to plaintiff that it would earn a substantial return on its \$500,000 payment towards the Investments, which defendants knowingly fabricated, and that plaintiff was harmed in that its funds were not returned but, rather, were used to perpetuate defendants' other business schemes (*see id.* ¶¶ 46-52). Accordingly, plaintiff's motion is granted in part, plaintiff is awarded judgment in the amount of its investment, \$500,000, and the fraud claim is severed from the remainder of this action.

The court is compelled to deny plaintiff's request for \$4.5 million in punitive damages. Plaintiff fails to state that punitive damages have been or are routinely awarded for similar fraudulent conduct in comparable cases and fails to offer a factual basis to award any punitive damages.

Accordingly, it is


ORDERED that plaintiff's motion for a default judgment, motion sequence number 003, 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 \$500,000, 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 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 3/12/20 at 10:30 am/pm

2/18/2020  
DATE

  
ANDREA MASLEY, J.S.C.

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