

Kaufhold v Hickson

2020 NY Slip Op 31253(U)

May 7, 2020

Supreme Court, New York County

Docket Number: 159655/2019

Judge: Kathryn E. Freed

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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. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

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INDEX NO. 159655/2019

CLAREN KAUFHOLD,

Plaintiff,

MOTION SEQ. NO. 001

- v -

FREDRIC HICKSON,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9 were read on this motion to/for JUDGMENT - DEFAULT.

In this action sounding in breach of contract and fraud, plaintiff Claren Kaufhold moves, inter alia, pursuant to CPLR 3215, for a default judgment against defendant Frederic Antonio Hickson. After a review of the motion papers, as well as the relevant statutes and case law, the motion, which is unopposed, is denied with leave to renew upon proper papers.

Plaintiff commenced the captioned action by filing a summons with notice on October 4, 2019. Doc. 1. The summons with notice indicated that the claim was for breach of contract and fraud and that plaintiff sought damages in an amount in excess of \$78,000. Doc. 1.

On October 19, 2019, defendant was personally served with the summons with notice. Doc. 7.

Plaintiff now moves, inter alia, pursuant to CPLR 3215, for a default judgment against defendant. In support of the motion, plaintiff's counsel submits the summons with notice, an affidavit of service of the summons with notice, an attorney affirmation, plaintiff's affidavit of merit, and proof of service of the motion.

In his attorney affirmation, plaintiff's counsel states, inter alia, that defendant has failed to respond to the summons with notice. Doc. 4.

In her affidavit of merit, plaintiff states that, in 2009, she "agreed to make available for loan to defendant a sum in the amount of \$50,000." She also alleges that she and defendant "entered an identical agreement for an additional sum of \$28,000" in 2010. She further claims that defendant stole her debit card and, using the same in 2009, made unauthorized charges to the card in the amount of \$4,156.16.

CPLR 3215(a) provides, in pertinent part, that "[w]hen a defendant has failed to appear, plead or proceed to trial . . . the plaintiff may seek a default judgment against him." It is well settled that a party moving for a default judgment pursuant to CPLR 3215 must establish proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the default in

answering or appearing. *See Gantt v North Shore-LIJ Health Sys.*, 140 AD3d 418, 31 N.Y.S.3d 864 (1st Dept 2016).

Plaintiff has established service of the summons with notice as well as the defendant's default in responding to the same. However, the motion must be denied insofar as it fails to set forth the facts constituting the claim as required by CPLR 3215 (f). While the standard applied in evaluating the facts constituting a party's claim is not stringent, "some proof of liability is ... required to satisfy the court as to the prima facie validity of ... uncontested causes of action" *IMG Intl. Mktg. Group, Inc. v SDS William St., LLC*, 32 Misc. 3d 1233(A), 1233A (Sup Ct New York County 2011) (citation omitted). Although plaintiff claims that defendant breached an agreement to pay her back \$50,000, as well as a separate, identical agreement to pay her back \$28,000, she does not allege whether the agreements were written or oral and, if written, fails to submit copies of the same. Additionally, although plaintiff claims that defendant used her debit card to steal \$4,156.16 from her, she fails to submit any debit card statements, a police report, or any other substantiation of an allegedly improper transaction.

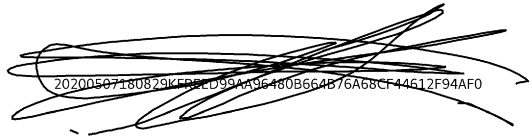
Finally, plaintiff has failed to provide proof that defendant was served with an additional copy of the summons with notice as required by CPLR 3215(g)(3)(i).

Therefore, in light of the foregoing, it is hereby:

ORDERED that the motion by plaintiff for a default judgment is denied with leave to renew upon proper papers within 30 days after entry of this order, upon penalty of dismissal; and it is further

ORDERED that this constitutes the decision and order of the court.

5/7/2020
DATE



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KATHRYN E. FREED, J.S.C.

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