

Bob Neill of Greensboro, LLC v Oskvarek
2020 NY Slip Op 32596(U)
August 10, 2020
Supreme Court, New York County
Docket Number: 153954/2020
Judge: Kathryn E. Freed
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
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

-----X

INDEX NO. 153954/2020

BOB NEILL OF GREENSBORO, LLC D/B/A MERCEDES-
BENZ OF GREENSBORO,

MOTION SEQ. NO. 001

Plaintiff,

- v -

DECISION AND ORDER

VICTOR OSKVAREK,

Defendant.

-----X

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

Plaintiff creditor Bob Neill of Greensboro, LLC d/b/a Mercedes-Benz of Greensboro ("plaintiff") moves for summary judgment in lieu of complaint, pursuant to CPLR 3213, to domesticate and enforce a judgment obtained against defendant Victor Oskvarek ("defendant") in the state of North Carolina (Doc. 2). After a review of the motion papers, as well as the relevant statutes and case law, the motion, which is unopposed, is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND:

This action stems from allegations that, in or about May and June 2019, defendant, who is a resident of New York, purchased automobile parts from plaintiff, a North Carolina corporation, for which a balance of \$8,354.17 remained outstanding (Docs. 3 ¶ 3-7; 4). In September 2019, plaintiff filed a summons and complaint against defendant in the General Court of Justice, District Court Division for the State of North Carolina, Forsyth County ("the North Carolina Court"), seeking to recover, *inter alia*, the debt owed (Doc. 5). After service of the summons and complaint,

plaintiff moved for entry of a default judgment against defendant based on his failure to interpose an answer or otherwise appear in the action (Docs. 7). On November 21, 2019, the North Carolina Court entered judgment against defendant in the amount of \$8,354.17, plus interest at the rate of 8% per annum from June 3, 2019, and it awarded plaintiff costs and \$1,253.12 in attorney fees (Docs. 9-10).

Plaintiff now moves, pursuant to CPLR 3213, for an order recognizing and domesticating the judgment rendered by the North Carolina Court, which remains unsatisfied (Docs. 2; 3 ¶ 16). Defendant has failed to oppose the motion.

LEGAL CONCLUSIONS:

CPLR 3213 provides that "when an action is based . . . upon any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint" (see *Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A., "Rabobank Intl.," N.Y. Branch v Navaro*, 25 NY3d 485, 491 [2015] [emphasis added]). "The purpose of CPLR 3213 is 'to provide quick relief on documentary claims so presumptively meritorious that a formal complaint is superfluous, and even the delay incident upon waiting for an answer and then moving for summary judgment is needless'" (*SpringPrince, LLC v Elie Tahari, Ltd.*, 173 AD3d 544, 545 [1st Dept 2019], quoting *Weissman v Sinorm Deli*, 88 NY2d 437, 443 [1st Dept 1996]; accord *Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A., "Rabobank Intl.," N.Y. Branch v Navaro*, 25 NY3d at 491-492).

Further, where a judgment is entered upon default in a sister state, a plaintiff may proceed to enforce it in New York by motion for summary judgment in lieu of complaint (see *Morin Boats v Acierno*, 150 AD3d 844, 845 [2d Dept 2017]; *Ho v McCarthy*, 90 AD3d 710, 711 [2d Dept

2011]; *Ionescu v Brancoveanu*, 246 AD2d 414, 416 [1st Dept 1998]). A plaintiff is entitled to such relief upon producing an authenticated or exemplified copy of the foreign judgment against the defendant, proof of the unsatisfied judgment, and proof that the defendant was properly served with the summons and motion papers (*see Mortimer Offshore Servs. Ltd. v Manufacturas Orga Ltda*, 2019 NY Slip Op 30720[U], 2019 NY Misc LEXIS 1229, *2 [Sup Ct, NY County 2019]). Service of process "under CPLR 3213 is subject to the rules governing service of the summons generally" (*Capolino v Goren*, 155 AD3d 1414, 1415 [3d Dept 2017]). If these requirements are satisfied, the judgment is entitled to recognition under the doctrine of full faith and credit and "[t]he sole inquiry [before this Court], if raised by a judgment debtor, is the determination of whether the rendering court had jurisdiction to issue the judgment" (*Robert Walters Assoc. Cal v Further Lane Sec., L.P.*, 2016 NY Slip Op 31603[U], 2016 NY Misc LEXIS 3070, *5 [Sup Ct, NY County 2016] [emphasis added]; *see Fiore v Oakwood Plaza Shopping Ctr., Inc.*, 78 NY2d 572, 577 [1991], *cert denied* 506 US 823 [1992]; *TCA Global Credit Master Fund, L.P. v Puresafe Water Sys., Inc.*, 151 AD3d 1098, 1099 [2d Dept 2017]; *JDC Fin. Co. I v Patton*, 284 AD2d 164, 166 [1st Dept 2001]; *Ionescu v Brancoveanu*, 246 AD2d at 416).

The motion is denied, with leave to renew upon proper papers. Although plaintiff submits a copy of the exemplified judgment and an affidavit from its "Parts Manager," Chris Swink, who affirms, in relevant part, that the judgment remains unsatisfied (Docs. 3 ¶ 15; 10), there is no proof that defendant was properly served with the summons and motion papers (*see Mortimer Offshore Servs. Ltd. v Manufacturas Orga Ltd.*, 2019 NY Slip Op 30720[U], 2019 NY Misc LEXIS 1229, *2 [Sup Ct, NY County 2019]; *TCA Global Credit Master Fund, L.P. v Puresafe Water Sys., Inc.*, 151 AD3d at 1099-1100). Thus, plaintiff has failed to establish its prima facie entitlement to judgment as a matter of law.

Therefore, in accordance with the foregoing, it is hereby:

ORDERED that the motion by Plaintiff Bob Neill of Greensboro, LLC d/b/a Mercedes-Benz of Greensboro seeking summary judgment in lieu of complaint, pursuant to CPLR 3213, is denied, with leave to renew upon proper papers within 30 days after entry of this order; and it is further

ORDERED that, within 20 days after this order is uploaded to NYSCEF, plaintiff's counsel shall serve a copy of this order, with notice of entry, on defendant; and it is further

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

8/10/2020
DATE

KATHRYN E. FREED, J.S.C.

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