

RDM Capital Funding, LLC v Benedicto Truck LLC

2020 NY Slip Op 33811(U)

November 16, 2020

Supreme Court, New York County

Docket Number: 657718/2019

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: HON. MELISSA ANNE CRANE **PART** **IAS MOTION 15EFM**

Justice

-----X

RDM CAPITAL FUNDING, LLC

Plaintiff,

- v -

BENEDICTO TRUCK LLC

Defendant.

-----X

INDEX NO. 657718/2019

MOTION DATE 08/20/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12

were read on this motion to/for JUDGMENT - MONEY.

Upon the foregoing documents, it is

In motion sequence 001, plaintiff RDM Capital Funding, LLC, moves, pursuant to CPLR 3215, for an order directing the entry of a default judgment against defendants Benedicto Truck LLC and Arturo Benedicto, jointly and severally, for the sum of \$19,275.00 with interest from December 18, 2019, and for costs and disbursements.

CPLR 3215 (a) provides in part, that "[w]hen a defendant has failed to appear, plead or proceed to trial...the plaintiff may seek a default judgment against him. If the plaintiff's claim is for a sum certain or for a sum which can by computation be made certain, application may be made to the clerk within one year after the default." 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, (3) proof of the defendant's default in answering or appearing, and (4) proof of the amount due by an affidavit made by the party. *See* CPLR 3215 (f).

Plaintiff demonstrates that defendant Arturo Benedicto executed a personal guaranty on August 15, 2019, and agreed to irrevocably, absolutely and unconditionally guarantee to plaintiff prompt and complete performance of all of Benedicto Truck LLC's obligations pursuant to an agreement Benedicto Truck LLC entered into on August 15, 2019 with plaintiff. Plaintiff submits its Verified Complaint which was signed and sworn by representative Ian Goldberg and also submits an affidavit in support of the motion signed by representative Manny Yosipov. Yosipov states that Benedicto Truck LLC breached its agreement and that a balance of \$13,500.00 was owed to plaintiff, as well as a \$675.00 default fee, a \$100.00 ACH debit fee, and a \$5,000.00 "Blocked Account Fee." Plaintiff submits a copy of the "Master Receivables Purchase Agreement" which includes Arturo Benedicto's "Personal Guaranty of Performance" and the "Fee Structure Addendum" that sets forth amounts owed if Benedicto Truck LLC defaulted on its obligations. Plaintiff also submits an Affidavit of Service and an Affirmation of Mailing pursuant to CPLR 3215 (G) (3) (i).

Therefore, because plaintiff has submitted proof of service of the summons and complaint, proof of the facts constituting the claim, proof of Arturo Benedicto's failure to answer or appear in this action, and because Arturo Benedicto has failed to oppose any claims, the part of plaintiff's motion for a default judgment as against Arturo Benedicto is granted.

With regard to defendant Benedicto Truck LLC, in the Affirmation of Service for the subject motion, counsel for plaintiff states that on March 16, 2020, the Notice of Motion for Default Judgment, Affidavit in Support and Affirmation, and the Request of Judicial Intervention were served "on each of the parties at each of the addresses listed below." *See* NYSCEF DOC. NO. 11. Despite the use of this language, and although this motion seeks relief as against both defendants, the Affirmation of Service only lists defendant Arturo Benedicto and the address of

“676 Riverside Drive #6F New York, NY 10031.” The Affirmation of Service fails to indicate if defendant Benedicto Truck LLC was also served with this motion and fails to state whether Arturo Benedicto was authorized to receive service for Benedicto Truck LLC.

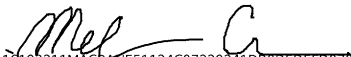
While Arturo Benedicto was served with this motion by mail in New York, the Summons and Verified Complaint as well as the Affirmation of Mailing pursuant to CPLR 3215 (g) (3) (i) of the Summons and Complaint, include a New Jersey address for Benedicto Truck LLC. Specifically, the Affirmation of Mailing pursuant to CPLR 3215 (g) (3) (i) states that Benedicto Truck LLC was served with the Summons and Verified Complaint at “295 Jefferson Street, Apt 2, Paterson, NJ 07522.” *See* NYSCEF DOC. NO. 7; NYSCEF DOC. NO. 9. The Request for Judicial Intervention dated March 16, 2020, also states that the address of Benedicto Truck LLC is “295 Jefferson Street, Apt 2, Paterson, NJ 07522.” *See* NYSCEF DOC. NO. 12.

Therefore, as it remains unclear to the court whether service of this motion was proper as to Benedicto Truck LLC, the part of plaintiff’s motion for a default judgment as to this defendant is denied without prejudice, with leave to renew upon proof of service. *See* Uniform Rules for New York State Trial Courts § 202.8 (b).

Accordingly, it is

ORDERED that plaintiff RDM Capital Funding, LLC’s motion for default judgment is granted without opposition against Arturo Benedicto and the Clerk is directed to enter judgment in favor of plaintiff in the sum of \$19,275.00 with interest from December 18, 2019, together with costs and disbursements, as taxed by the Clerk; and it is further

ORDERED the remaining part of plaintiff's motion for a default judgment as against Benedicto Truck LLC is denied without prejudice, with leave to renew upon proof of service.


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11/16/2020
DATE

MELISSA ANNE CRANE, J.S.C.

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