

MAK Global Ltd. v Kam Yee Wong

2021 NY Slip Op 30339(U)

January 8, 2021

Supreme Court, Kings County

Docket Number: 518694/2018

Judge: Richard J. Montelione

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART DJMP

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MAK GLOBAL LIMITED,

Plaintiff,

-against-

KAM YEE WONG a/k/a PANY WONG,
HERMAN CHEUNG, HARVEST KINGDOM, INC.
and LEGACY TRADING INTERNATIONAL, INC.,

Defendant.

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The following papers were read on this motion pursuant to CPLR 2219(a):

Papers

Numbered

Plaintiff's Notice of Motion, dated October 22, 2019; Plaintiff's Attorney Affirmation in Support of David Singer, Esq., affirmed on October 22, 2019; Affirmation of Monte Ting-Hay Lai, affirmed on October 22, 2019; Summons and Verified Complaint (Exhibit A); Affidavits of Service (Exhibit B); CPLR 3215(G)(3) Notice (Exhibit C); Affidavits of Non-Military Service (Exhibit D); Affidavits of Service of Corporate Defendants (Exhibit E); CPLR 3215 (G)(4) Notice (Exhibit F); NYS Dept of State Division of Corporations Entity Search Information (Exhibit G); Guarantee Letter dated March 9, 2018 (Exhibit H); Invoices dated April 2, 2018 (Exhibit I); Copies of Wire Transfers (Exhibit J); Copy of Contract (Exhibit K); Invoices dated April 9, 2018 (Exhibit L); Purported Letter of Authentic Authorized Purchaser (Exhibit K).....	1
Defendants' Attorney Affirmation in Opposition of David Dore, Esq., affirmed on March 17, 2020; A Copy of the Bankruptcy Petition of Kam Yee Wong (Exhibit A); A Copy of Affidavits of Service (Exhibit B).....	2
Plaintiff's Attorney Affirmation in Reply of Daniel Singer, Esq. affirmed on July 20, 2020; Copy of Adversarial Complaint (Exhibit A); Copy of Bankruptcy Discharge (Exhibit B); A Copy of Bankruptcy Docket (Exhibit C); A Copy of the Adversary Proceeding Docket (Exhibit D); A Copy of Proof of Claim (Exhibit E)...	3

MONTELIONE, RICHARD J., J.

In this action to recover damages from a breach of contract whereby plaintiff paid defendants for goods that were not delivered, plaintiff moves for a default judgment pursuant to CPLR 3215. Defendants oppose.

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On a motion for leave to enter judgment against a defendant for the failure to answer or appear, a plaintiff must submit proof of service of the summons and complaint, proof of the facts constituting the claim by an affidavit made by the party, and proof of the defendant's default (*see* CPLR § 3215[f]; *Mercury Cas. Co. v. Surgical Ctr. at Milburn, LLC*, 65 A.D.3d 1102, 885 N.Y.S.2d 218).

A defendant who has failed to timely appear or answer the complaint must provide a reasonable excuse for the default and demonstrate a potentially meritorious defense to the action, when opposing a motion for leave to enter judgment upon its failure to appear or answer and moving to extend the time to answer or to compel the acceptance of an untimely answer (*see Fried v. Jacob Holding, Inc.*, 110 A.D.3d 56, 58, 970 N.Y.S.2d 260, 262; *Ennis v. Lema*, 305 A.D.2d 632, 633, 760 N.Y.S.2d 197). The determination of what constitutes a reasonable excuse lies within the sound discretion of the trial court (*see Mid-Hudson Props., Inc. v. Klein*, 167 A.D.3d 862, 864, 90 N.Y.S.3d 264; *White v. Inc. Vill. of Hempstead*, 41 A.D.3d 709, 710, 838 N.Y.S.2d 607, 608).

In the instant case, plaintiff proffered proof of proper service and a verified complaint (CPLR 3215). In opposition, defendants contend, *inter alia*, that this matter should be stayed in light of the automatic stay triggered by the bankruptcy petition filed by defendant Kam Yee Wong a/k/a Pany Wong and subsequent adversary proceeding filed by plaintiff herein. However, “[t]he automatic stay provisions of the Federal bankruptcy laws apply only to the parties in the adversary proceeding in Bankruptcy Court and do not extend to nonbankrupt codefendants” (*Maynard v. George A. Fuller Co.*, 236 A.D.2d 300, 653 N.Y.S.2d 349 [1st Dept. 1997]; *Lynch v. Johns-Manville Sales Corp.*, 6 Cir., 710 F.2d 1194) and “it is in the discretion of the court to grant a severance (*see*, CPLR 603; *King v. Northway Agencies, Inc.*, 127 A.D.2d

955, 512 N.Y.S.2d 559; *County of Broome v. Aetna Cas. & Sur. Co.*, 126 A.D.2d 818, 511 N.Y.S.2d 147), as well as a stay (*see*, CPLR 2201; *Houston v. Trans Union Credit Information Co.*, 154 A.D.2d 312, 546 N.Y.S.2d 600)” (*Rosenbaum v. Dane & Murphy, Inc.*, 189 A.D.2d 760, 592 N.Y.S.2d 391 [2nd Dept.1993]; *see also Maynard v. George A. Fuller Co.*, 236 A.D.2d 300, 653 N.Y.S.2d 349 [1st Dept. 1997]). As such, the bankruptcy stay in this matter is applicable solely to defendant Kam Yee Wong a/k/a Pany Wong.

Further, defendant’s counsel affirms that the remaining defendants were not properly served and did not receive notice of this action. However, “[s]uch an affirmation by counsel is without evidentiary value and thus unavailing” (*Zuckerman v. City of New York*, 49 N.Y.2d 557, 404 N.E.2d 718 [1980]). “[W]hen a defendant submits a sworn denial of receipt of service containing specific facts to refute the statements in the affidavit of the process server, the prima facie showing is rebutted and the plaintiff must establish personal jurisdiction by a preponderance of the evidence at a hearing” (*U.S. Bank, N.A. v. Peralta*, 142 A.D.3d 988, 988–989, 37 N.Y.S.3d 308). “A hearing is not required where the defendant fails to ‘swear to specific facts to rebut the statements in the process server’s affidavits’” (*U.S. Bank, N.A. v. Peralta*, 142 A.D.3d at 989, 37 N.Y.S.3d 308, quoting *Simonds v. Grobman*, 277 A.D.2d 369, 370, 716 N.Y.S.2d 692). In this case, defendant did not proffer any admissible evidence that refutes the affidavit of the process server and as such, defendant has not raised an issue of fact as to the jurisdiction of the court. Lastly, defendant proffered neither a reasonable excuse nor a meritorious defense in opposing plaintiff’s motion for default judgment.

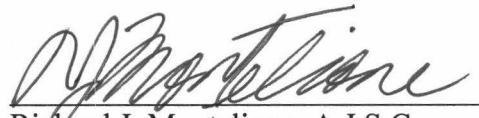
Therefore, plaintiff’s motion for default judgment is granted as to the defaulting defendants, Herman Cheung, Harvest Kingdom Inc. and Legacy Trading International, Inc. and plaintiff’s action against defendant Kam Yee Wong a/k/a Pany Wong is severed and stayed.

Plaintiff shall file a Note of Issue on or by February 18, 2021 and an inquest and assessment of damages is scheduled for April 27, 2021.

A copy of this order shall be served on all sides with Notice of Entry within 15 days of the date of the entry of the order.

This constitutes the decision and order of the court.

Dated: Jan. 8, 2021


Richard J. Montelione, A.J.S.C.

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