

Carn v Anderson

2021 NY Slip Op 30824(U)

March 10, 2021

Supreme Court, New York County

Docket Number: 654185/2018

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 48EFM

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BRIAN CARN, DICK DAVIS, BRIAN CARN MINISTRIES,
EGEN INTERNATIONAL, LLC,

Plaintiffs,

- v -

PARIS ANDERSON, ANDREW BARRETT, A.S. CLARKE,
RAFAEL MUNIZ, JOHN DOE AND OR JANE DOE I
THROUGH X, 1ST DOMINION CREDIT UNION &
CAPITAL TRUST, BIG CHIPS INVESTMENT LLC,
DOMINION BANK AND TRUST CO. LTD., DOMINION
GLOBAL INVESTMENT CAPITAL TRUST, THE LAW
OFFICE OF RAFAEL E. MUNIZ PLLC, XYZ CORP. 1 - 10,
DARNELL FAQUA, TIMOTHY PAUL, BRUNO ROI, and
IPAM (G.A.P.I.),

Defendants.

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INDEX NO. 654185/2018

MOTION DATE 12/15/2020

MOTION SEQ. NO. 012

**DECISION + ORDER ON
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 012) 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330

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

In motion sequence number 012, plaintiffs move, pursuant to CPLR 3215, for a default judgment against defendants 1st Dominion Credit Union & Capital Trust, Dominion Bank and Trust Co. Ltd., and Dominion Global Investment Capital Trust (collectively, Dominion Defendants). There is no opposition to this motion.

The Dominion Defendants made an initial appearance in this action through counsel. However, on March 20, 2019, that counsel filed a motion to withdraw which was granted on April 16, 2019. (NYSCEF Doc. No. [NYSCEF] 249, Decision and Order [Seq. 007].) The Dominion Defendants were directed to retain new counsel within 10 days of the court's decision.¹ (*Id.*) On April 24, 2019, this court denied plaintiffs' motion for a default judgment

¹ CPLR 321 requires that a corporate party appear by counsel.

against the Dominion Defendants without prejudice and gave the Dominion Defendants 20 days to answer the complaint. (NYSCEF 254, Decision and Order [Seq. 008].) To date, the Dominion Defendants have failed to appear since their counsel withdrew and have failed to file an answer.

“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].)

Proof of Service

On September 5, 2018, the Dominion Defendants former counsel informed plaintiffs' counsel that he would accept service of the verified complaint on behalf of the Dominion Defendants. (NYSCEF 329, (9/5/18 Email.) On November 21, 2018, this court granted plaintiffs' motion for an extension to serve the verified complaint and compelled defendants to accept the verified complaint pursuant to CPLR 3012. (NYSCEF 321, Decision and Order [Seq. 001].) On December 13, 2018, plaintiffs served defendants with the first amended verified complaint via NYSCEF. (NYSCEF 322, First Amended Verified Complaint.)

Proof of Facts

“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.” (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70 [2003].) The movant may, however, file a “verified complaint instead of the affidavit when the complaint has been properly served” and,

because “the [movant] does not have the benefit of discovery, the affidavit or verified complaint need only allege enough facts to enable a court to determine that a viable cause of action exists.” (*Id.* at 70-71.)

Here, plaintiffs submit a first amended complaint verified by plaintiff Brian Carn, Jr., President of plaintiff Brian Carn Ministries Inc. (NYSCEF 322, First Amended Verified Complaint.) Specifically, plaintiffs seek a default judgment on two causes of action: breach of fiduciary duty and fraud. Plaintiffs have met their burden of proof.

The elements of a claim for breach of fiduciary duty are “(1) defendant owed [plaintiff] a fiduciary duty, (2) defendant committed misconduct, and (3) [plaintiff] suffered damages caused by that misconduct.” (*Burry v Madison Park Owner LLC*, 84 AD3d 699, 699-700 [1st Dept 2011].) Here, plaintiffs have sufficiently alleged facts to prove their claim of breach of fiduciary duty. First, defendants have previously conceded that they owed plaintiff a fiduciary duty. (NYSCEF 73, Memorandum of Law ¶ 30.) Second, plaintiffs have alleged enough facts to satisfy the elements of misconduct and damages. (NYSCEF 322, First Amended Verified Complaint ¶¶ 98 [b]–[d]; 121-124.)

“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). Plaintiffs sufficiently allege that the Dominion Defendants intentionally misrepresented that they were valid banking institutions who had the ability to issue standby letters of credit, knowing that the standby letters of credit were bogus, and their representations in SWIFT messages were false. (NYSCEF 322, First Amended Verified Complaint ¶¶ 84-90; 98 [b]–[d].) Plaintiffs further allege that they reasonably relied on the Dominion Defendants’

misrepresentations and were damaged by transferring funds in the amount of \$1 million.

(Id. ¶¶ 125-127.)

Proof of Default

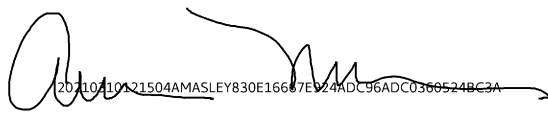
The Dominion Defendants have defaulted by failing to retain counsel and answer the first amended verified complaint.

Accordingly, it is

ORDERED that plaintiffs' motion for a default judgment against defendants 1st Dominion Credit Union & Capital Trust, Dominion Bank and Trust Co. Ltd., and Dominion Global Investment Capital Trust is granted; and it is further

ORDERED that this matter will be scheduled for an inquest on damages on May 11, 2021 at 2:30PM to be conducted via Microsoft Teams; and it is further

ORDERED that the parties shall comply with this court's rules and file in NYSCEF by May 4, 2021: affidavits, exhibits, chart of exhibits noting whether there is an objection to the exhibit or not, and pre-inquest memos.



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3/10/2021
DATE

ANDREA MASLEY, J.S.C.

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