

Valley Natl. Bank v Lucky Barb Cab Corp.
2021 NY Slip Op 31044(U)
April 1, 2021
Supreme Court, New York County
Docket Number: 653947/2020
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 3EFM

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VALLEY NATIONAL BANK,	INDEX NO. <u>653947/2020</u>
Plaintiff,	MOTION DATE <u>01/04/2021</u>
- v -	MOTION SEQ. NO. <u>001</u>
LUCKY BARB CAB CORP., NADER TAHMASEBI	
Defendants.	DECISION + ORDER ON MOTION
-----X	

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31
were read on this motion for a DEFAULT JUDGMENT.

Plaintiff Valley National Bank moves for a default judgment under CPLR 3215 against Defendants Lucky Barb Cab Corp. ("Lucky Barb Cab") and Nader Tahmasebi for failure to timely appear, answer, or otherwise move with respect to the Complaint. For the reasons described below, Plaintiff's motion is granted.

Plaintiff has submitted un rebutted evidence demonstrating compliance with the requirements of CPLR 3215. Therefore, Plaintiff's motion for a default judgment is granted as to liability for each claim contained in the Complaint.

The relief sought in Plaintiff's First and Second Causes of Action (to recover amounts due under a defaulted Note and Guaranty, respectively) is for a sum certain of \$822,369.24 (consisting of principal and accrued interest through August 14, 2020, and late fees), plus interest accruing on the outstanding principal amount (\$787,795.87) at the per diem contractual default rate of \$221.57 from August 15, 2020. As such, Plaintiff's motion for a default judgment is granted as to damages in respect of Plaintiff's First and Second Causes of Action.

With respect to the Third Cause of Action, Plaintiff is entitled to immediate possession of the collateral securing Lucky Barb Cab's loan payment obligations, as well as an order directing Lucky Barb Cab to assemble and deliver to Plaintiff the collateral (*see* NYSCEF Doc No. 18, amended security agreement § 3.2 [authorizing Plaintiff, after a default of Lucky Barb Cab's obligations under the Note, "without any further demand or notice except to such extent as notice may be required by applicable law, to take possession and/or sell or otherwise dispose of all or any of the Collateral at public or private sale," and providing, "[u]pon demand by [Plaintiff], [Lucky Barb Cab] shall assemble the Collateral and make it available to [Plaintiff]"]; *see also* New York UCC § 9-609 [providing that, after default, a secured party "may take possession of the collateral" "pursuant to judicial process" or "without judicial process, if it proceeds without breach of the peace," and, if so agreed, "may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties"]; *Banco Popular N. Am. v Abraham*, 2018 WL 5834152 [Sup Ct, NY County, Oct. 10, 2018, No. 652843/2017 (Sherwood, J.)].

Plaintiff's request for an order of seizure pursuant to CPLR 7102 [d] is denied, without prejudice, because it is beyond the scope of the relief sought in the Complaint (*see* CPLR 3215 [b]) and Plaintiff otherwise fails to satisfy the procedural requirements set forth in CPLR 7102 [c] and [e] (*see Thomas v Mahoney*, 1996 WL 34571268 [Sup Ct, NY County, May 3, 1996, No. 95-28444]).

In its Fourth Cause of Action, Plaintiff seeks collection expenses, including attorneys' fees. Claims for attorneys' fees "are not ordinarily amenable to characterization as claims for 'sums certain'" (*Arent Fox Kintner Plotkin & Kahn, PLLC v Lurzer GmbH*, 297 AD2d 590, 590 [1st Dept 2002]; *Reynolds Sec., Inc. v Underwriters Bank & Trust Co.*, 44 NY2d 568, 572 [1978]).

[holding that to be considered a “sum certain” there can be no dispute as to the amount due)].

Therefore, because courts do not treat attorneys’ fees as a sum certain, Plaintiff shall be directed to submit to the Court a bill of costs, with notice to Defendants, to determine the issue of attorneys’ fees.

Defendants may seek a vacatur of the instant default judgment if they can satisfy the requirements of CPLR 5015, CPLR 317, or any other relevant law.

Accordingly, it is

ORDERED that Plaintiff’s motion for a default judgment is **GRANTED** against Defendants in the amount alleged in the Complaint, \$822,369.24, plus interest accruing on the outstanding principal amount (\$787,795.87) at the per diem contractual default rate of \$221.57 from August 15, 2020, together with costs and disbursements as calculated by the County Clerk; it is further

ORDERED that Defendant Lucky Barb Cab shall assemble and deliver to Plaintiff the collateral, including medallions issued by the New York City Taxi and Limousine Commission bearing numbers 7H33 and 7H36; it is further

ORDERED that Plaintiff shall submit to the Court a bill of costs with respect to collection expenses within 10 days from the date of entry of this Decision and Order, and Defendants shall have 10 days thereafter to submit an objection to the bill of costs; and it is further

ORDERED that the Clerk shall enter a judgment in accordance with this Decision and Order, to be submitted to the Clerk by Plaintiff after the Court determines the amount of collection expenses.

This constitutes the Decision and Order of the Court.

4/1/2021

DATE

CHECK ONE:

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CASE DISPOSED

☒

GRANTED

☐

DENIED

APPLICATION:

☐

SETTLE ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☐

NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

OTHER

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SUBMIT ORDER

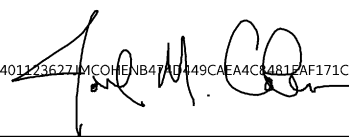
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FIDUCIARY APPOINTMENT

☐

REFERENCE

20210401123627JMC0HENB47AD449CAEA4C8481FAF171CC1F9D35



JOEL M. COHEN, J.S.C.