

**Valley Natl. Bank v Sahara Cab Corp. of N.Y.**

2021 NY Slip Op 31047(U)

March 31, 2021

Supreme Court, New York County

Docket Number: 653951/2020

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

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,

Plaintiff,

- v -

SAHRA CAB CORP. OF N.Y., NADER TAHMASEBI

Defendants.

INDEX NO. 653951/2020

MOTION DATE 01/04/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

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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 DEFAULT JUDGMENT.

Plaintiff Valley National Bank moves for a default judgment under CPLR 3215 against Defendants Sahra Cab Corp. of N.Y. (“Sahra 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 \$814,906.00 (consisting of principal and accrued interest through August 13, 2020, and late fees), plus interest accruing on the outstanding principal amount (\$786,051.15) at the per diem contractual default rate of \$221.08 from August 14, 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 Sahra Cab's loan payment obligations, as well as an order directing Sahra 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 Sahra 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], [Sahra 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

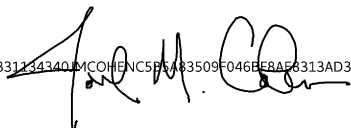
**ORDERED** that Plaintiff’s motion for a default judgment is **GRANTED** against Defendants in the amount alleged in the Complaint, \$814,906.00, plus interest accruing on the outstanding principal amount (\$786,051.15) at the per diem contractual default rate of \$221.08 from August 14, 2020, together with costs and disbursements as calculated by the County Clerk; it is further

**ORDERED** that Defendant Sahra Cab shall assemble and deliver to Plaintiff the collateral, including medallions issued by the New York City Taxi and Limousine Commission bearing numbers 5K23 and 5K24; 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.

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JOEL M. COHEN, J.S.C.

3/31/2021  
DATE

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"/>	<input type="checkbox"/> FIDUCIARY APPOINTMENT
				<input type="checkbox"/> REFERENCE