

<b>TD Bank, N.A. v Goma Films Inc.</b>
2021 NY Slip Op 33729(U)
June 4, 2021
Supreme Court, New York County
Docket Number: Index No. 650795/2021
Judge: Debra A. James
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES

PART 59

*Justice*

-----X

TD BANK, N.A.,

Plaintiff,

- v -

GOMA FILMS INCORPORATED, CAMILO A. MENDOZA,  
and JENNIFER L. DYER,Defendants.  
-----XINDEX NO. 650795/2021MOTION DATE 12/02/2021MOTION SEQ. NO. 001**DECISION + ORDER -  
AMENDED (MOTION RELATED)**

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, 25, 26, 27

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

Upon the foregoing documents, including proof of service of the notice of the motion papers upon defendant Gomez Films Incorporated, it is

ORDERED that the Order filed on December 8, 2021 resolving motion sequence 001 in this action is VACATED, RESETTLED AND CORRECTED PURSUANT TO CPLR § 5019(a) [see Kiker v Nassau County, 85 NY2d 879 (1995)]; and it is further

ORDERED that to the extent that the motion of plaintiff for default judgment seeks relief against defendant Camilo A. Mendoza, such motion is withdrawn per letter dated June 1, 2021 from Eric Holmes, Esq., Meyner and Landis LLP; and it is further

ORDERED that the action is severed and continued as to the remaining defendants; and it is further

ORDERED and ADJUDGED that plaintiff's motion for a default judgment against defendant GOMA FILMS INCORPORATED is hereby, except for attorney's fees, GRANTED on default per attached order and judgment; and it is further

ORDERED and ADJUDGED that plaintiff's motion for summary judgment against defendant JENNIFER L. DYER is hereby, except for attorneys' fees, GRANTED on default per attached order and judgment; and it is further

ORDERED that the issue of attorneys' fees to be assessed against defendants GOMA FILMS INCORPORATED and JENNIFER L. DYER is severed and referred for determination pursuant to CPLR 3215 (b) to a Special Referee for a reference to hear and determine pursuant to CPLR 4319; and it is further

ORDERED that pursuant to CPLR 43 the Clerk is directed to enter judgment in favor of plaintiff TD BANK, N.A. and against defendants GOMA FILMS INCORPORATED and JENNIFER DYER in accordance with the report of the aforementioned Special Referee without any further application; and it is further

ORDERED that a copy of this Order with notice of entry shall be served by plaintiff TD BANK, N.A. upon defendants GOMA FILMS INCORPORATED and JENNIFER DYER, within thirty (30) days after entry hereof.

DECISION

In this action for breach of promissory note and guaranty, plaintiff TD BANK, N.A. moves for a default judgment for the relief demanded in the Complaint pursuant to CPLR 3215 based upon the failure of defendants GOMA FILMS INCORPORATED and CAMILO A. MENDOZA to answer or appear.

As defendant CAMILO A. MENDOZA has filed a Chapter 7 Bankruptcy Petition and has the protection of the automatic stay pursuant to 11 USC § 362, plaintiff has withdrawn the motion as to such defendant (NYSCEF Document Number 20).

Plaintiff has submitted proof of service of the summons and complaint and proof of service of this motion upon defendant GOMA FILMS INCORPORATED. Defendant GOMA FILMS INCORPORATED has defaulted in appearance on this motion. Plaintiff has further submitted an affidavit of facts pursuant to CPLR 3215 (f), as well as evidence of the default of such defendant by attorney affirmation. Plaintiff has also submitted proof of the additional mailing of the summons required by CPLR 3215(g)(4). This motion is brought within one year of the default.

As attorney's fees are not a sum certain, such damages must be determined at an inquest hearing. See Arent Fox Kintner Plotkin & Kahn, PLLC v Lurzer GmbH, 297 AD2d 590 [1st Dept 2002]). Therefore, except for attorney's fees, which shall be referred to Special Referee to hear and determine, the court

shall grant a default judgment against the defendant GOMEZ FILM INCORPORATED for the relief sought in the Complaint.

Defendant Jennifer L. Dyer has served and filed an answer but submits no opposition to plaintiff's motion seeking a summary judgment against her. Accordingly, plaintiff is entitled to such relief against her.

*Debra A. James*

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<u>6/4/2021</u>			<u>DEBRA A. JAMES, J.S.C.</u>	
<b>DATE</b>				
<b>CHECK ONE:</b>	<input checked="" type="checkbox"/>	<b>CASE DISPOSED</b>	<input type="checkbox"/>	<b>NON-FINAL DISPOSITION</b>
	<input type="checkbox"/>	<b>GRANTED</b>	<input type="checkbox"/>	<b>GRANTED IN PART</b>
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<b>OTHER</b>
<b>APPLICATION:</b>	<input type="checkbox"/>	<b>SETTLE ORDER</b>	<input type="checkbox"/>	<b>SUBMIT ORDER</b>
<b>CHECK IF APPROPRIATE:</b>	<input type="checkbox"/>	<b>INCLUDES TRANSFER/REASSIGN</b>	<input type="checkbox"/>	<b>FIDUCIARY APPOINTMENT</b>
			<input checked="" type="checkbox"/>	<b>REFERENCE</b>