

TD Bank, N.A. v Goma Films Inc.

2021 NY Slip Op 33745(U)

January 19, 2023

Supreme Court, New York County

Docket Number: Index No. 650795/2021

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

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.
-----X

INDEX NO. 650795/2021
MOTION DATE 01/17/2023
MOTION SEQ. NO. 001

DECISION + ORDER -
RESETTLED/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, 28

were read on this motion to/for

JUDGMENT - DEFAULT

ORDER

Upon the foregoing documents, it is

ORDERED that the Amended Order filed on January 17, 2023 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that the motion of plaintiff for default judgment seeks relief against defendant Camilo A. Mendoza, such motion is withdrawn per letter dated June 1, 2021 from Eric Holmes, Esq., Meyner and Landis LLP (NYSCEF Document Number 20); and it is further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 pursuant to CPLR § 3215 (b), except for attorneys' fees, is hereby 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, except for attorneys' fees, is hereby 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 to a Special Referee for a reference to hear and determine pursuant to CPLR § 4317(b); and it is further

ORDERED that plaintiff shall cause a copy of this order with notice of entry, including proof of service thereof by NYSCEF upon defendant Jennifer L. Dyer and by regular first class mail upon defendant Goma Films Incorporated at its last known address, to be filed with the Special Referee Clerk (Room 119M, 646-386-3028; spref@nycourts.gov), who shall arrange for a date for a reference to determine pursuant to CPLR § 4317(b);

ORDERED that pursuant to CPLR § 4319, 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.

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 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 by attorney affirmation of the default of such defendant. 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.

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.

As attorneys' 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 attorneys' 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 and a summary judgment against defendant Jennifer L. Dyer for the relief sought in the Complaint.

1/19/2023

DATE

Debra A. James
DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE