

NTL Mgt. LLC v Wine Symphony, Inc.

2022 NY Slip Op 30157(U)

January 19, 2022

Supreme Court, New York County

Docket Number: Index No. 151295/2020

Judge: Louis L. Nock

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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. LOUIS L. NOCK PART 38M

Justice

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INDEX NO. 151295/2020

NTL MANAGEMENT LLC, AS ASSIGNEE OF CITIBANK,
N.A.,

MOTION DATE 09/27/2021

Plaintiff,

MOTION SEQ. NO. 002

- v -

WINE SYMPHONY, INC., D/B/A WINE SYMPHONY INC,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 21, 22, 23, 24, 25

were read on this motion for JUDGMENT - DEFAULT.

LOUIS L. NOCK, J.

Upon the foregoing documents, it is hereby ordered

Plaintiff’s motion for entry of a default judgment pursuant to CPLR 3215 is granted, upon default and without opposition, based upon the following memorandum decision.

Background

In this action breach of a Commercial Credit Agreement, plaintiff NTL Management LLC (“plaintiff”), as assignee of nonparty Citibank, N.A. (“Citibank”), moves for entry of a default judgment against defendant Wine Symphony, Inc., d/b/a Wine Symphony Inc (“defendant”).

Pursuant to a Commercial Credit Application/Agreement dated March 7, 2012 (the “agreement”), Citibank extended defendant a loan of \$100,000, to be repaid in monthly installments (NYSCEF Doc. No. 19, ¶¶ 5-6; NYSCEF Doc. No. 22). Plaintiff alleges that defendant defaulted under the agreement as of April 26, 2018, when defendant failed to make

monthly payments (NYSCEF Doc. No. 19, ¶ 7; NYSCEF Doc. No. 24). As set forth in the payment history, as of March 26, 2018, defendant had an outstanding balance of \$38,233.40.¹ Subsequent to defendant's default on its loan payments, on November 20, 2018, Citibank, N.A. assigned its rights under the agreement to plaintiff (NYSCEF Doc. No. 23). Plaintiff now seeks entry of a default judgment.

Plaintiff commenced this action by filing a summons and complaint on February 5, 2020 (NYSCEF Doc. No. 1). An affidavit of service filed on March 2, 2020 attests to service on defendant on February 27, 2020 by service upon the Secretary of State pursuant to Business Corporation Law § 306 (NYSCEF Doc. No. 3). An affidavit of service filed on November 30, 2020 attests to service by mail on defendant of the notice pursuant to CPLR 3215(g)(4) on March 19, 2020 (NYSCEF Doc. No. 4, ¶ 17). To date, defendant has not answered the complaint or otherwise appeared in the action.

Plaintiff initially submitted a proposed default judgment to the Clerk of the Court on November 30, 2020, which was marked "returned for correction," and plaintiff was directed to file a motion for entry of a default judgment (NYSCEF Doc. No. 6; NYSCEF Doc. No. 18, ¶¶ 6-7). Plaintiff then moved for a default judgment on June 17, 2021. By decision and order dated July 15, 2021, this court denied the motion for failure to submit an affidavit of a person with knowledge or verified complaint attesting to the facts constituting plaintiff's claim (NYSCEF Doc. No. 16). Thereafter, on September 27, 2021, plaintiff made the instant motion. There is no opposition to the motion.

¹ Insofar as plaintiff alleges, both in the complaint and the affidavit in support of the instant motion, that the amount due and owing from defendant is \$44,901.88, plaintiff does not provide any documentation supporting this larger amount.

Discussion

A plaintiff that seeks entry of a default judgment for a defendant's failure to answer must submit proof of service of the summons and complaint upon the defendant, proof of the facts constituting the claim, and proof of the defendant's default (CPLR 3215). "The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts" (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). "[D]efaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them" (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). Nevertheless, "CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action" (*Guzetti v City of New York*, 32 AD3d 234, 235 [1st Dept 2006] [internal quotations and citations omitted]).

Here, plaintiff has met its burden on the motion by submission of the affidavit of service demonstrating service of the summons and complaint on defendant (NYSCEF Doc. No. 3), an affirmation of its counsel, Clifford Katz, Esq., attesting to the default (NYSCEF Doc. No. 18, ¶ 10), and the affidavit of Mitchell Domershick, plaintiff's managing member, attesting to the facts constituting plaintiff's claim (NYSCEF Doc. No. 19). As set forth in Domershick's affidavit, Citibank loaned defendant \$100,000 pursuant to the agreement, Citibank assigned its interest in the agreement to plaintiff, and defendant defaulted under the agreement by failing to make a monthly payments beginning on April 26, 2018 (NYSCEF Doc. No. 19, ¶¶ 5-8; NYSCEF Doc. Nos. 22-24). As set forth in the payment history attached to the motion papers, defendant owes an outstanding balance of \$38,233.40 (NYSCEF Doc. No. 24). Therefore, plaintiff's motion for entry of a default judgment against defendant for that balance, plus interest, is granted.

The portion of the motion seeking an award of attorneys' fees is denied, however; for the lack of any asserted basis grounded in the agreement or otherwise.

Accordingly, it is hereby

ORDERED that the motion is granted as set forth herein; and, therefore, it is

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff NTL Management LLC, as assignee of Citibank, N.A. and against defendant Wine Symphony, Inc., d/b/a Wine Symphony Inc in the sum of \$38,233.40, with interest at the statutory rate from April 26, 2018, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs, and it is further

ORDERED that, insofar as plaintiff seeks its reasonable attorneys' fees, the motion is denied.

This will constitute the decision and order of the court.

ENTER:

Louis L. Nock

<u>1/19/2022</u>			<u>LOUIS L. NOCK, J.S.C.</u>	
DATE				
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	DENIED