

<b>NYBDC Local Dev. Corp. v Olli Studio, Inc.</b>
2022 NY Slip Op 30217(U)
January 13, 2022
Supreme Court, New York County
Docket Number: Index No. 653080/2021
Judge: Louis L. Nock
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LOUIS L. NOCK PART 38M

Justice

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NYBDC LOCAL DEVELOPMENT CORPORATION
d/b/a PURSUIT COMMUNITY FINANCE f/k/a NYBDC
LOCAL DEVELOPMENT CORPORATION d/b/a
THE EXCELSIOR GROWTH FUND,

Plaintiff,

- v -

OLLI STUDIO, INC. a/k/a DH WEDDING PHOTO VIDEO
INC., et al.,

Defendants.

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INDEX NO. 653080/2021
MOTION DATE 09/23/2021
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23

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

Upon the foregoing documents, it is ordered that:

Plaintiff's motion for entry of a default judgment pursuant to CPLR 3215 is denied based upon the following memorandum decision.

Background

In this action on a promissory note and accompanying personal guaranty, plaintiff NYBDC Local Development Corporation d/b/a Pursuit Community Finance f/k/a NYBDC Local Development Corporation d/b/a The Excelsior Growth Fund ("plaintiff") moves for entry of a default judgment against defendants Olli Studio Inc. a/k/a DH Wedding Photo Video Inc. ("Olli Studio"), Dongwon Hwang ("Hwang") and Moo Jae ("Jae").

Pursuant to a Note and Security Agreement dated December 6, 2017, plaintiff loaned Olli Studio \$100,000, to be repaid in monthly installments of \$1,438.49 beginning on February 1, 2018 for five years (NYSCEF Doc. No. 15). Upon Olli Studio's failure to make a payment,

plaintiff could serve Olli Studio with a written demand to cure the default (*id.*, ¶ 7). If Olli Studio failed to cure the default within 20 days of service of the demand, plaintiff could accelerate the remaining balance of the loan and demand immediate payment (*id.*). Hwang and Jae also signed a personal guaranty of Olli Studio's payment obligations under the Note and Security Agreement (NYSCEF Doc. No. 16).

Olli Studio made payments under the note on payments due from February 1, 2018 through May 1, 2019, several of which were late (NYSCEF Doc. No. 11, ¶ 6; NYSCEF Doc. No. 17). Thereafter, Olli Studio made partial payments for June, July, and August 2019 before ceasing payment altogether (NYSCEF Doc. No. 11, ¶ 8; NYSCEF Doc. No. 17). The record does not indicate that plaintiff ever made a written demand for Olli Studio to cure the payment default, but on March 22, 2021 plaintiff served Olli Studio, Hwang, and Jae, with a letter in which plaintiff purported to accelerate the balance of the loan and demanded payment from Olli Studio under the Note and Security Agreement and from Hwang and Jae pursuant to the Guaranty (NYSCEF Doc. No. 18). Plaintiff now seeks entry of a default judgment on its first cause of action against Olli Studio for the outstanding loan balance of \$92,774.52, and on its fourth cause of action against Hwang and Jae for the same amount under the Guaranty.

Plaintiff commenced this action by filing a summons and complaint on May 10, 2021 (NYSCEF Doc. No. 1). An affidavit of service filed on May 18, 2021 attests to service on Olli Studio via the Secretary of State pursuant to BCL 306(b) on May 14, 2021 (NYSCEF Doc. No. 6). An affidavit of service filed on June 7, 2021 attests to service on Hwang by in hand delivery pursuant to CPLR 308(1) on May 19, 2021 (NYSCEF Doc. No. 7). An affidavit of service filed on July 6, 2021 attests to service on Jae by affixing a copy of the summons and complaint to the door of Jae's place of residence on June 18, 2021 and sending a follow up mailing to the same

address on June 22, 2021 pursuant to CPLR 308(4) (NYSCEF Doc. No. 8). Affidavits of additional service filed with the moving papers attest to service by mail on Olli Studio, Hwang, and Jae in conjunction with filing the affidavits of service of the summons and complaint on defendants (NYSCEF Doc. No. 14). To date, no defendant has answered the complaint or otherwise appeared in the action. There is no opposition to the motion.

### 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 not met its burden on the motion. The Note and Security Agreement defines as a default the failure to pay the loan pursuant to its terms (NYSCEF Doc. No. 15, ¶ 7). However, Olli Studio’s default in that respect merely allows plaintiff to send a written demand to Olli Studio that it cure the default (*id.*). Only after Olli Studio fails to cure the default within 20 days may plaintiff accelerate the entire remaining balance of the loan and demand immediate payment thereof (*id.*). Thus, service of a written demand is a condition precedent to acceleration

of the balance, and without it, plaintiff may not accelerate and demand immediate payment (*see Norwest Bank Minnesota, N.A. v Sabloff*, 297 AD2d 722, 723 [2d Dept 2002] [“the plaintiff’s submissions, including an attorney’s affirmation containing conclusory assertions that notice was given, were insufficient to establish that the plaintiff served on the appellants the requisite notice to cure their default”]). Here, plaintiff does not submit any evidence that it made such a written demand on Olli Studio at any time prior to sending the March 22, 2021 letter. Therefore, plaintiff has not established its entitlement to entry of a default judgment.

Accordingly, it is hereby

ORDERED that the motion for entry of a default judgment is denied.

This constitutes the Decision and Order of the Court.



1/13/2022

DATE

LOUIS L. NOCK, 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