

<b>EMA Fin., LLC v Gex Mgt., Inc.</b>
2022 NY Slip Op 30256(U)
January 26, 2022
Supreme Court, New York County
Docket Number: Index No. 655295/2019
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. ARLENE BLUTH PART 14

*Justice*

-----X

EMA FINANCIAL, LLC,

Plaintiff,

- v -

GEX MANAGEMENT, INC., CARL DORVIL

Defendants.

-----X

INDEX NO. 655295/2019

MOTION DATE N/A

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39

were read on this motion to/for VACATE.

The motion by defendant Gex Management, Inc. (“Gex”) to vacate the judgment, vacate a subsequent stipulation, and to return the matter to the active trial calendar is denied. The cross-motion by plaintiff for an award of reasonable legal fees is granted.

**Background**

In this disposed action, plaintiff previously obtained judgment by confession against defendants on September 13, 2019 in the amount of \$195,250.16 .

Gex admits that plaintiff obtained a judgment against it but points out that in 2021 the parties executed a stipulation that contemplated allowing for the conversion of the debt into shares of stock in Gex. Gex argues that this agreement contained a provision that it was only effective if it was signed by the Court and the stipulation went un-filed (with the Court) for two months. It speculates that plaintiff did this because it became clear that gaining shares would be

a more valuable result. Gex complains that it is unfair for plaintiff to decline cash and opt for the shares.

In opposition, plaintiff points out that there is no dispute that Gex signed the confession of judgment at issue here. It argues that Gex had to bring a separate plenary action to vacate a confession of judgment and cannot seek the instant relief under this index number. Plaintiff also observes that the Court never so-ordered the stipulation concerning the stock conversion and so there is no reason for this Court to vacate that stipulation, a stipulation which both defendants signed.

In support of its cross-motion for legal fees, plaintiff contends that it is entitled to legal fees under the terms of the note and seeks \$19,964.16 in reasonable fees plus interest.

In reply and in opposition to the cross-motion, Gex insists it was entitled, as a matter of law, to vacate the confession of judgment and stipulation in this case. Gex argues that the judgment is defective on its face and does not add up. It also argues that plaintiff's request for legal fees is too late.

The Court did not consider the "reply" filed by movant (NYSCEF Doc. No. 40) which is a sur-reply filed without permission.

### **Discussion**

As an initial matter, the Court denies the branch of the motion that seeks to vacate the stipulation signed by the parties and uploaded on September 15, 2021. As plaintiff points out, that stipulation states that it is only effective if the Court signed it, which it did not. The Court observes that this document did not contain a signature line for the Court or a cover letter explaining why the parties wanted to the Court to sign it. Instead, the parties uploaded a letter in

a disposed case, nearly two years after a judgment was entered, without any explanation for why it wanted the Court to do something. Unsurprisingly, the Court did not sign it.

The balance of Gex's motion is denied. "Defendants may challenge the judgment by confession only by trial in a plenary action, and not by motion" (*Cash and Carry Filing Serv., LLC v Perveez*, 149 AD3d 578, 50 NYS3d 277 (Mem) [1st Dept 2017]). Here, Gex attempts to challenge the confession of judgment by motion and so it is procedurally improper.

Even if the Court could consider the merits of Gex's arguments about the confession of judgment, it would not compel a different outcome. As counsel for plaintiff explains, the Clerk contacted him about the calculation of damages. Plaintiff filed an affidavit from its representative (Ms. Preston) who detailed how much was owed and included an additional \$25,000 based on a provision of the note concerning the stock price. Neither defendant contested this amount until now and plaintiff emphasizes that it was approved by the Clerk.

The Court is satisfied that the correct amount was contained in the judgment and defendant's attempt to evade paying its debt now is without merit.

The Court also grants plaintiff's cross-motion for legal fees. Gex's claim, that it is too late to seek legal fees, is not supported by any caselaw whatsoever. Nor does Gex argue that there is no basis for reasonable legal fees in the note that forms the basis of this dispute. The Court awards plaintiff the \$19,964.16 it seeks as Gex did not question the amount sought by plaintiff; it only claimed it was too late.

Accordingly, it is hereby

ORDERED that the motion by defendant Gex Management, Inc. to *inter alia* vacate the judgment by confession and the parties' stipulation is denied; and it is further

ORDERED that the cross-motion by plaintiff for reasonable legal fees is granted and the Clerk is directed to enter judgment in favor of plaintiff and against defendants in the amount of \$19,964.16 plus statutory interest from the date of this decision upon presentation of proper papers therefor.

1/26/2022  
DATE

  
ARLENE BLUTH, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<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"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE