

BD15 LLC v MLHB, LLC
2022 NY Slip Op 30551(U)
February 17, 2022
Supreme Court, New York County
Docket Number: 655392/2021
Judge: Sabrina B. Kraus
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SABRINA KRAUS PART 57TR

Justice

-----X

BD15 LLC,

Plaintiff,

- v -

MLHB, LLC, MONEY-PENNY HOLDING LLC

Defendant.

-----X

INDEX NO. 655392/2021

MOTION DATE 02/15/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16

were read on this motion to/for JUDGMENT - DEFAULT

BACKGROUND

Plaintiff commenced this action for breach of contract, fraud and conspiracy to defraud, aiding and abetting fraud, conversion and unjust enrichment relating to an investment in a diamond seeking damages in the amount of \$2,610,826.28.

Plaintiff asserts in August 2015, its predecessor in interest, ABC, entered into an agreement with Henri Barguirdjian (HB), as the principal of MLHB, LLC and Money-Penny Holding LLC (MPH) for the purchase of a 16.9% interest in a 9.97 carat diamond. Plaintiff alleges ABC invested \$2,500,000.00 with MLBH.

Plaintiff asserts HB represented the diamond was going to be polished and resold for a profit. Plaintiff alleges in August 2018, without telling plaintiff or any other investors, MLHB sold a portion of its interest in the diamond for \$1,060,000.00. Plaintiff further asserts the diamond was sold in August 2019, for \$18,971,960.00, for which MLHB received \$3,682,990.00. However, plaintiff alleges HB represented to investors that the diamond was still for sale and would be sold by the end of 2021. Plaintiff never received any proceeds from HB,

MLHB or MPH, and commenced the instant action. The summons and complaint were filed on September 9, 2021. The time within which the defendants may answer or otherwise move to respond to said complaint has expired and has not been extended.

PENDING MOTION

On February 15, 2022, plaintiff moved pursuant to CPLR §3215, for a default judgment against MLHB and MPH, in the amount of \$2,610,826.28, for breach of contract, fraud and conspiracy to defraud, aiding and abetting fraud, conversion and unjust enrichment. Defendants have failed to appear or submit opposition.

DISCUSSION

CPLR § 3215(a) provides, in pertinent part, that “[w]hen a defendant has failed to appear, plead or proceed to trial... the plaintiff may seek a default judgment against [it].” “On a motion for leave to enter a default judgment pursuant to CPLR §3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party's default in answering or appearing.” *Atlantic Cas. Ins. Co. v RJNJ Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011).

Plaintiff submits in support of the motion the affidavit of Daniel J. Hurteau, Esq. (NYSCEF Doc. No. 7), the affidavits of service of the summons and complaint on defendants (NYSCEF Doc. No. 8), the affirmation of Maura Ziska, a manager employed by plaintiff (NYSCEF Doc. 11), and a copy of an agreement dated August 3, 2015 and signed by HB (NYSCEF Doc. No. 12).

Plaintiff however fails to establish several elements necessary for its claim. Initially, plaintiff asserts that ABC has assigned its interest in the contract with HB, however, offers no documentation to prove this assignment. Second, the purported contract, dated August 3, 2015,

does not indicate who the parties are. It is essentially a letter, signed by HB, but the person to whom it is addressed, is redacted. The document is not countersigned by anyone. Although the letter/contract requires an initial payment to be made to MLHB, LLC, plaintiff offers no proof of payment in support of the application for a default judgment. All that the letter establishes is that an offer was made to someone by HB. Lastly, plaintiff fails to offer any proof that the diamond was sold. Plaintiff has failed to establish the existence of a contract, entitlement to any damages or standing to seek a default judgment as against defendants. Based on the forgoing, the motion for a default is denied.

CONCLUSION

Wherefore, it is hereby

ORDERED that plaintiff's motion seeking a default judgment against defendants MLHB, LLC and Money Penny Holding LLC, is denied; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on all defendants the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

This constitutes the decision and order of the court.



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2/17/2022

DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: