

<b>Pentagon Fed. Credit Union v Arutyunov</b>
2022 NY Slip Op 30786(U)
March 4, 2022
Supreme Court, New York County
Docket Number: Index No. 651739/2021
Judge: Nancy M. Bannon
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. NANCY BANNON PART 42

Justice

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PENTAGON FEDERAL CREDIT UNION, AS SUCCESSOR BY MERGER TO PROGRESSIVE CREDIT UNION,

Plaintiff,

INDEX NO. 651739/2021

MOTION DATE 01/10/2022

MOTION SEQ. NO. 001

- v -

RENATA ARUTYUNOV, OLEG REYNGACH, BLACKOUT HACKING CORP.

Defendants.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

were read on this motion to/for DEFAULT JUDGMENT.

The plaintiff, Pentagon Federal Credit Union, as successor by merger to Progressive Credit Union (Pentagon), commenced this action against the defendants to recover damages for breach of certain promissory notes and guaranty agreements and replevin of the taxi medallions pledged as collateral for the notes. Defendants Renata Arutyunov (Arutyunov) and Blackout Hacking Corp. (Blackout) have failed to interpose an answer or otherwise appear in this action, and as such are in default. Pentagon now moves pursuant to CPLR 3215 for leave to enter a default judgment against those defendants. No opposition is submitted. The motion is granted.

Initially, the court notes that Pentagon informs the court that on May 4, 2021, defendant Oleg Reyngach (Reyngach) filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code in the Bankruptcy Court for the Eastern District of New York under Case No. 21-41231. Therefore, the action is stayed as against defendant Reyngach. See 11 USC § 362(a); Howell v New York Post Co., 81 NY2d 115 (1993); Educ. Res. Inst., Inc. v. Concannon, 69 AD3d 539, 540 (1st Dept. 2010) ("the automatic stay provision of Section 362(a) of the Bankruptcy Code only applies to proceedings 'against' the debtor").

“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 (see CPLR 3215[f]; Allstate Ins. Co. v Austin, 48 AD3d 720, 720).” Atlantic Cas. Ins. Co. v RJNJ Services, Inc., 89 AD3d 649 (2<sup>nd</sup> Dept. 2011). While the “quantum of proof necessary to support an application for a default judgment is not exacting . . . some firsthand confirmation of the facts forming the basis of the claim must be proffered.” Guzetti v City of New York, 32 AD3d 234, 236 (1<sup>st</sup> Dept. 2006). The proof submitted must establish a *prima facie* case. See Guzetti v City of New York, *supra*.

The plaintiff submits, *inter alia*, the affidavit of Cathyann Frank, the Director of Loss Mitigation and Member Business Loans for Pentagon, the subject notes, the subject guaranties, the relevant UCC-1 Financing Statements, and demand letters.

The plaintiff’s submissions establish that on or about June 3, 2011, Arutyunov executed a promissory note in favor of Pentagon in the principal sum of \$482,000.00, which was subsequently modified and extended by Applications for Extension/Modification, Letter Extensions, and Loan Modification and Extension Agreements (the first loan). As inducement for such, Arutyunov entered into a Security Agreement, whereby certain collateral, including New York City Taxi Medallion Nos. 9K69 and 9K70 were pledged as security for the first loan, which Blackout guaranteed. Pentagon perfected its security interest in the subject collateral by filing UCC-1 Financing Statements. Arutyunov and Blackout then defaulted on their obligations to Pentagon under the terms of the first loan by failing to pay the amounts due, beginning on March 30, 2020, leaving an unpaid principal balance of \$397,488.79 due and owing.

The plaintiff’s submissions establish the same with respect to two additional loans: On or about January 4, 2013, Arutyunov executed a promissory note in favor of Pentagon in the principal sum of \$100,000.00, which was subsequently modified and extended by a Loan Modification and Extension Agreement (the second loan). On or about November 30, 2018, Arutyunov executed a promissory note in favor of Pentagon in the principal sum of \$138,761.19 (the third loan). As inducement for such, Arutyunov entered into Security Agreements, whereby the same medallions were pledged as security, which Blackout guaranteed. Pentagon perfected its security interests by filing UCC-1 Financing Statements. Arutyunov and Blackout defaulted on their obligations on the second and third loans beginning on November 30, 2019

and October 30, 2020, respectively. An unpaid principal balance of \$88,149.23 remains due and owing on the second loan, and an unpaid principal balance of \$133,759.92 remains due and owing on the third loan.

The proof submitted also demonstrates that on or about February 19, 2021, Plaintiff sent demand letters to Arutyunov and Blackout advising them that they are in default and that the full amount under the loans is due and payable. The letters advise that if the defaults could not be cured, the medallions must immediately be turned over. Arutyunov and Blackout have failed to cure their defaults and the sums stated above remain unpaid, and notwithstanding, Blackout has not turned over possession of the subject taxi medallions.

Pentagon has established the facts underpinning its breach of contract claim by showing that there was “formation of a contract between the parties, performance by the plaintiff, the defendant's failure to perform, and resulting damage.” Flomenbaum v New York Univ., 71 AD3d 80, 91 (1<sup>st</sup> Dept. 2009). Where, as here, a contractual obligation is a promissory note, a plaintiff meets its burden by proving the existence of the subject note and nonpayment according to its terms. See Bonds Financial, Inc. v Kestrel Technologies, LLC, 48 AD3d 230 (1<sup>st</sup> Dept. 2008). Pentagon further shows that the terms of the subject guaranty agreements are clear, unambiguous, absolute and unconditional (Citibank, N.A. v Uri Schwartz & Sons Diamonds Ltd., 97 AD3d 444 [1<sup>st</sup> Dept. 2012]) and, having defaulted in this action, Blackout has not shown, or even alleged, any fraud, duress or any other wrongful conduct by the plaintiff in regard to the agreements. Indeed, having failed to answer, defendants Arutyunov and Blackout are “deemed to have admitted all factual allegations in the complaint and all reasonable inferences that flow from them.” Woodson v Mendon Leasing Corp., 100 NY2d 62, 70–71 (2003). Additionally, Pentagon demonstrates its entitlement to replevin of the subject medallions (*i.e.*, the collateral secured by the Security Agreements) by establishing that Blackout is in possession of the medallions and that Pentagon has a superior right. See Nissan Motor Acceptance Corp. v Scialpi, 94 AD3d 1067 (2<sup>nd</sup> Dept. 2012). More specifically, Pentagon shows that it lawfully holds the loans, Security Agreements, and UCC-1 Financing Statements, the defendants defaulted thereunder by virtue of their non-payments, defendant Blackout is in possession of the medallions, and Pentagon has a right to possession and delivery of the medallions under the terms of the Security Agreements and UCC-1 Financing Statements.

As in this case, CPLR 3215(a) requires that when a default judgment is taken against fewer than all the defendants, the action is severed as against the remaining defendant.

See Woodson v Mendon Leasing Corp., 259 AD2d 304 (1<sup>st</sup> Dept. 1999); see also Balanta v Stanline Taxi Corp., 307 AD2d 1017 (2<sup>nd</sup> Dept. 2003); Holt v Holt, 262 AD2d 530 (2<sup>nd</sup> Dept. 1999); Frolish v. Ryder Truck Rental, 63 AD2d 799 (3<sup>rd</sup> Dept. 1978).

Accordingly, and upon the foregoing papers, it is

ORDERED that the action is stayed as against defendant Oleg Reyngach pending the bankruptcy stay pursuant to 11 USC § 362; and the action is severed and shall continue as against that defendant upon the lifting of the bankruptcy stay; and it is further

ORDERED that the plaintiff's motion pursuant to CPLR 3215 for leave to enter a default judgment is granted, without opposition; and it is further

ORDERED that the Clerk of the court shall enter a money judgment in favor of the plaintiff (i) on the first and second causes of action against defendants Renata Arutyunov and Blackout Hacking Corp., jointly and severally, in the principal sum of \$397,488.79, plus contractual interest at the rate of 4.25% per annum from March 30, 2020 through the date of judgment; (ii) on the third and fourth causes of action against defendants Renata Arutyunov and Blackout Hacking Corp., jointly and severally, in the principal sum of \$88,149.23, plus contractual interest at the rate of 4.25% per annum from November 30, 2019 through the date of judgment; and (iii) on the fifth and sixth causes of action against defendants Renata Arutyunov and Blackout Hacking Corp., jointly and severally, in the principal sum of \$133,759.92, plus contractual interest at the rate of 4.25% per annum from October 30, 2020 through the date of judgment; and it is further

ORDERED that the plaintiff shall serve a copy of this order and judgment upon all defendants at their last known address by regular and certified mail, return receipt requested, within twenty (20) days of this order and judgment; and it is further,

ADJUDGED that the plaintiff Pentagon Federal Credit Union, as Successor by Merger to Progressive Credit Union, has a right of possession of New York City Taxi Medallion Nos. 9K69 and 9K70, superior to that of defendant Blackout Hacking Corp.; and it is further

ORDERED that the plaintiff, Pentagon Federal Credit Union, as Successor by Merger to Progressive Credit Union, shall have immediate and permanent possession of New York City Taxi Medallion Nos. 9K69 and 9K70 (collectively, the "medallions") from defendant Blackout Hacking Corp. and defendant Blackout Hacking Corp. shall cooperate with the plaintiff and deliver the medallions to the plaintiff within thirty (30) days of the service this order and judgment upon it; and it is further

ORDERED that if defendant Blackout Hacking Corp. fails to deliver the medallions to the plaintiff within thirty (30) days of the service this order and judgment upon it, the sheriff or other authorized official of any county where the medallions are found are hereby directed to seize and immediately deliver same to the plaintiff without bond, and if the medallions are not delivered to the sheriff or other authorized official, the sheriff or other authorized official may break open, enter, and search for the medallions wherever the medallions may be located; and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision, Order, and Judgment of the court.



NANCY M. BANNON, J.S.C.  
HON. NANCY M. BANNON

03/04/2022  
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE