

Bond St. Servicing LLC v Suburban Relocation Sys. LLC
2022 NY Slip Op 30936(U)
March 17, 2022
Supreme Court, New York County
Docket Number: Index No. 656750/2021
Judge: Sabrina Kraus
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS PART 57TR

Justice

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BOND STREET SERVICING LLC,
Plaintiff,

INDEX NO. 656750/2021

MOTION DATE 03/01/2022

MOTION SEQ. NO. 001

- v -

SUBURBAN RELOCATION SYSTEMS LLC, MEIR
MARKOVICH

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2
were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT.

BACKGROUND

Plaintiff commenced this action by service of a Summons and Notice of Motion for Summary Judgment in Lieu of Complaint, seeking \$22,924.43, plus interest, costs and attorney’s fees, based upon an instrument for the payment of money which is now due.

On or about July 24, 2017, plaintiff and defendants entered into a commercial credit agreement (Agreement) wherein plaintiff agreed to loan defendants \$125,000.00, to be repaid in semi-monthly payments of \$3060.96, at an interest rate of 16% per annum. Plaintiff asserts defendants defaulted in payments in August 2019.

PENDING MOTION

Plaintiff now seeks the outstanding principal of \$15,562.96, accrued interest of \$416.16, late fees of \$630.16 and default interest of \$6315.16.

The motion was returnable on March 1, 2022. Defendants failed to appear or submit opposition

DISCUSSION

CPLR § 3213 provides in pertinent part, “[w]hen an action is based upon an instrument for the payment of money only or upon any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint.”

In support plaintiff submits the affidavit of Benjamin Solomon, Chief Executive Officer of plaintiff (NYSCEF Doc 3); a copy of the Agreement (NYSCEF Doc 4) and a transaction history, showing payments made (NYSCEF Doc 5); and affidavits of service on each defendant (NYCEF Docs 8 and 9).

The affidavit of service on Meir Markovich shows only two attempts at personal service, both during business hours, before the process server resorted to conspicuous place service. The first attempt was on December 13, 2021 at 2:52 pm. The second attempt was December 14, 2021 at 4:50 pm. Only two attempts at personal service at defendants dwelling place, both during business hours, does not satisfy the due diligence requirement of CPLR 308 (4). (*Brown v Teicher* 188 AD2d 256 [1st Dept 1992]).

The affidavit of service on Suburban Relocation Systems LLC shows service to CSC Lawyers Incorporating Service Company, an agent registered to accept service on behalf of Suburban, on December 14, 2021 at 5:24 pm. The affidavit of service indicates the process server was, “...not allowed to deliver the court documents to an individual. I must log the entity that is being served into their computer and place the service in a basket for a legal representative

of CSC to retrieve.” Plaintiff is unable to establish that service was made to a “to an officer, director, managing or general agent, or cashier or assistant cashier or to any other agent authorized by appointment or by law to receive service,” as required under CPLR §311(a)(1). The papers herein were left in a basket, not handed to an actual person designated to accept service.

Plaintiff has also failed to establish compliance with the additional mailing requirement of CPLR 3215(g)(4).

Therefore, plaintiff is unable to establish the court has personal jurisdiction over these defendants, without which the motion denied.

CONCLUSION


Wherefore, it is hereby

ORDERED plaintiff’s motion for summary judgment in lieu of complaint is denied without prejudice to proof of having acquired proper and timely jurisdiction over defendants and compliance with the additional mailing requirement of CPLR 3215(g)(4); 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 and 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/suptctmanh); and it is further

ORDERED that this constitutes the decision and order of the court.

3/17/2022 DATE			 SABRINA KRAUS, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> REFERENCE
			<input type="checkbox"/> FIDUCIARY APPOINTMENT