

**Strategic Funding Source, Inc. v Wireless Direct of  
Ave P, Inc.**

2022 NY Slip Op 31069(U)

March 30, 2022

Supreme Court, New York County

Docket Number: Index No. 650208/2021

Judge: Sabrina Kraus

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. SABRINA KRAUS PART 57TR**

*Justice*

-----X

STRATEGIC FUNDING SOURCE, INC.,

Plaintiff,

- v -

WIRELESS DIRECT OF AVE P, INC., WIRELESS DIRECT  
CORP., ALBERT ELKAIEV

Defendant.

-----X

INDEX NO. 650208/2021

MOTION DATE 03/11/2022

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, 17, 18

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

**BACKGROUND**

Plaintiff commenced this action seeking damages for breach of contract, account stated, breach of guaranty and attorney's fees.

Plaintiff entered into a Revenue Based Factoring Agreement for the Purchase and Sale of Future Receivables (Agreement), dated June 2, 2014, wherein plaintiff purchased \$61,875.00 of Wireless Direct (Wireless) future receivables generated in the course of its business. On June 10, 2014, plaintiff paid Wireless \$50,000.00, as the agreed upon purchase price for the receivables. Albert Elkaiev (AE), owner of Wireless, executed a personal guaranty of Wireless' full performance under the Agreement. According to the Agreement, plaintiff was to collect 39% of the daily batch amount of receivables collected by Wireless, via Automated Clearing House (ACH) debits from AE's depositing account. Plaintiff asserts that by January 14, 2015, Wireless stopped depositing all of its receivables to the account. Plaintiff alleges of the \$61,875.00 of receivables purchased, Wireless has delivered a total of \$20,682.00 in receivables to plaintiff

leaving a balance of \$41,193.00, of receivables outstanding under the Agreement. Plaintiff is also seeking additional fees due under the Agreement.

The summons and complaint were filed on January 11, 2021. Wireless was served, by service on the Secretary of State of the State of New York, on January 22, 2021. Wireless Direct Corp was served by service to the managing attorney on January 22, 2021. AE was served personally on January 23, 2021 at 15 Pacific Avenue, Staten Island, New York 10312. An additional mailing, in accordance with CPLR §3215(g)(4)(i) was made on February 5, 2021.

The time within which defendants may answer or otherwise move to respond to said complaint has expired and has not been extended.

### **PENDING MOTION**

On March 11, 2022, plaintiff moved pursuant to CPLR §3215, for a default judgment against Wireless, AE and Wireless Direct Corp. 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 Nikolaos D. Athanasopoulos, Esq. (NYSCEF Doc. No. 8), the affirmation of David Wolfson, Vice President of Risk Management and Asset Recovery of plaintiff (NYSCEF Doc 7); a copy Agreement (NYSCEF

Doc 10); demand letter (NYSCEF Doc 11); statement of transactions (NYSCEF Doc 12); a copy of the summons and complaint (NYSCEF Doc 13); affidavit of service (NYSCEF Doc 14); an affidavit of additional mailing of the summons and complaint (NYSCEF Doc 15); and a non-military affidavit for Albert Elkaiev (NYSCEF Doc 16).

Plaintiff waives the second cause of action for account stated, as well as the fourth cause of action for pre-judgment attorneys fees.

Plaintiff has established *prima facie* entitlement to a default judgment as against Wireless Direct of Ave P, Inc., Wireless Direct Corp., Albert Elkaiev. Plaintiff has established damages in the amount of \$48,990.00, consisting of \$41,193.00 in outstanding receivables, \$297.00 in returned debit fees, \$2,500.00 in default fees and \$5,000.00 in blocked account fees.

### CONCLUSION

Wherefore, it is hereby

ORDERED that plaintiff's motion seeking a default judgment against defendants Wireless Direct of Ave P, Inc., Wireless Direct Corp., Albert Elkaiev is granted; and it is further

ORDERED plaintiff is awarded a judgment in the amount of \$48,990.00, with interest from January 11, 2021 forward at the statutory rate, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.; and it is further

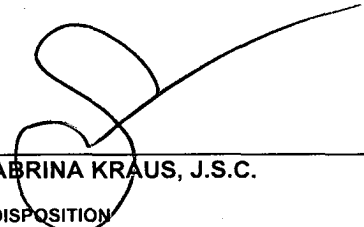
ORDERED the clerk shall enter judgment accordingly; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on defendants at 15 Pacific Avenue, Staten Island, New York 10312, and at 418 Ave P Brooklyn, New York, 11223, and in c/o Spiegel & Utrera, PA PC at 1

Maiden Lane 5th Floor New York, New York, 10038, and, and on 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](http://www.nycourts.gov/supctmanh)); and it is further

This constitutes the decision and order of the court.

<u>3/30/2022</u> DATE	 SABRINA KRAUS, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE