

**Global Merchant Cash, Inc. v Craft Solutions, Inc.**

2022 NY Slip Op 31341(U)

April 22, 2022

Supreme Court, New York County

Docket Number: Index No. 160961/2019

Judge: Nancy M. Bannon

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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. NANCY BANNON PART 42**

*Justice*

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GLOBAL MERCHANT CASH, INC.,

Plaintiff,

- v -

CRAFT SOLUTIONS, INC. d/b/a CRAFT SOLUTIONS, INC.  
and SAMUEL ALFORD

Defendant.

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INDEX NO. 160961/2019

MOTION DATE 04/22/2022

MOTION SEQ. NO. 004

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87

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

In this breach of contract action, the court, by an order dated October 19, 2021, granted a motion by the plaintiff pursuant to CPLR 3126 to compel discovery and directed the defendants to respond to the plaintiff's demands dated June 25, 2021, on or before November 19, 2021 (MOT SEQ 001). The court further directed the parties to appear for a preliminary conference on February 10, 2022. By an order dated November 16, 2021, the court granted a motion by counsel for the defendants to be relieved, directed the defendants to comply with the October 19, 2021, order and directed the parties to appear on February 10, 2022, as previously scheduled (MOT SEQ 002). Upon the defendants' failure to comply, the plaintiff filed a motion pursuant to CPLR 3126 to strike the defendants' answer and counterclaims for failure to provide discovery (MOT SEQ 003). No opposition was submitted. On February 10, 2022, the plaintiff appeared for the conference and the defendants failed to appear and failed to contact the court.

By an order dated February 22, 2022, the court granted in part the plaintiff's motion pursuant to CPLR 3126 to strike the defendants' answer. The court held that the answer would be stricken if the defendants failed to respond to all outstanding discovery demands within 30 days and directed the parties to appear for the preliminary conference on April 14, 2022. The court further cautioned that the defendants' failure to appear on February 10, 2022, subjects them to sanctions pursuant to 22 NYCRR 202.27, which provides that "[a]t any scheduled call of

a calendar or at any conference, if all parties do not appear and proceed or announce their readiness to proceed immediately or subject to the engagement of counsel, the judge may note the default on the record and enter an order . . . grant[ing] judgment by default . . . [or] dismiss[ing] the action . . . [or] may make such order as appears just.” Furthermore, the failure of a corporation to appear by an attorney constitutes a default. See CPLR 321(a); World on Columbus, Inc. v L.C.K. Restaurant Group, Inc., 260 AD2d 323 (1<sup>st</sup> Dept. 1999).

On April 14, 2022, the defendants again failed to appear. Counsel for the plaintiff appeared, submitted a proposed conference order and represented that the defendant failed to provide discovery as directed in the prior order. Therefore, by an order dated April 15, 2022, the court struck the defendants’ answer pursuant to CPLR 3126 and 22 NYCRR 202.27.

The plaintiff now moves for leave to enter a default judgment pursuant to CPLR 3215. The defendants did not file any opposition to the motion. The motion is granted as to the first and second causes of action of the complaint alleging breach of contract and breach of guaranty. The plaintiff has submitted proof of service of the summons and complaint on the defendants and proof of the facts constituting those claims. See CPLR 3215(f); 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; Silberstein v Presbyterian Hosp., 95 AD2d 773 (2<sup>nd</sup> Dept. 1983).

The plaintiff’s submissions include the verified complaint, an affidavit of George Ramirez, Collections Manager for the plaintiff, an account ledger and the subject “Agreement for the Purchase and Sale of Future Receipts”, dated May 15, 2019, which contains the guaranty agreement and is signed by defendant Samuel Alford twice, in his capacity as owner of the corporate defendant and as guarantor. Ramirez alleges that the defendants sold \$398,750.00 of its receivables to the plaintiff and remitted only \$212,744.98, leaving \$186,005.02, exclusive of costs and fees. Ramirez further alleges that the defendants breached the agreement on or about October 17, 2019, by blocking the plaintiff’s access to the designated account from which the plaintiff was to withdraw receivables, by failing to deposit receivables into the account and/or by depositing receivables into another account. According to Ramirez, the plaintiff is entitled to an

additional \$5,795.00 in fees, consisting of \$500.00 in NSF fees, \$295.00 for a UCC-1 filing fee and a \$5,000.00 default fee as provided by the parties' agreement. The total demanded in Ramirez' affidavit is \$191,800.02, plus interest from October 17, 2019.

The plaintiff's proof establishes the necessary elements of a breach of contract claim: (1) the existence of a contract, (2) the plaintiff's performance under the contract, (3) the defendants' breach of that contract, and (4) resulting damages. See Second Source Funding, LLC v Yellowstone Capital, LLC, 144 AD3d 445 (1<sup>st</sup> Dept. 2016); Harris v Seward Park Housing Corp., 79 AD3d 425 (1<sup>st</sup> Dept. 2010). Further, "[w]here a guaranty is clear and unambiguous on its face and, by its language, absolute and unconditional, the signer is conclusively bound by its terms absent a showing of fraud, duress or other wrongful act in its inducement." Citibank, N.A. v Uri Schwartz & Sons Diamonds Ltd., 97 AD3d 444, 446-447 (1<sup>st</sup> Dept. 2012), quoting National Westminster Bank USA v Sardi's Inc., 174 AD2d 470, 471 (1991). The terms of the subject guaranty agreement are clear, unambiguous, absolute and unconditional and, having defaulted in this action, the defendants have not shown, or even alleged, any fraud, duress or any other wrongful conduct by the plaintiff in regard to the agreement. There is no dispute that upon the corporate defendant's default, the individual defendant failed to perform under the guaranty. See 4 USS, LLC v DSW MS, LLC, 120 AD3d 1049 (1<sup>st</sup> Dept. 2014).

The answer having been stricken, the defendant is now without any defenses in this action, and the plaintiff is entitled to an inquest on damages. See Biton v Turco, 88 AD3d 519 (1<sup>st</sup> Dept. 2011); Santiago v New York City Health & Hospitals Corp., 10 AD3d 393 (2<sup>nd</sup> Dept. 2004). "When an answer is stricken and a default entered, the defendant 'admits all traversable allegations in the complaint, including the basic allegation of liability, but does not admit the plaintiff's conclusion as to damages [citation omitted].'" Curiale v Ardra Ins. Co., 88 NY2d 268, 279 (1996), quoting Rokina Opt. Co. v Camera King, 63 NY2d 728, 730 (1984); see Amusement Bus. Underwriters v American Intl. Group, 66 NY2d 878, 880 (1985); Cole-Hatchard v Eggers, 132 AD3d 718 720 (2<sup>nd</sup> Dept 2015); Gonzalez v Wu, 131 AD3d 1205 1206 (2<sup>nd</sup> Dept 2015). Where, however, the damages are for a sum certain or a sum which can be made certain by computation, there is no need to conduct an inquest to assess the appropriate amount of damages. See Curiale v. Ardra Ins. Co., supra, at 279; Transit Graphics v. Arco Distrib., 202 AD2d 241, 241 (1<sup>st</sup> Dept 1994). "The term 'sum certain' in this context contemplates a situation in which, once liability has been established, there can be no dispute as to the amount due."

Reynolds Sec., Inc. v Underwriters Bank & Trust Co., 44 NY2d 568, 572 (1978). That is the case here.

The court does not reach the third and fourth causes of action, unjust enrichment and conversion. The plaintiff waives its claim for attorney’s fees for purposes of this motion.


Generally, interest is computed “from the earliest ascertainable date the cause of action existed”. CPLR 5001(b). In a breach of contract action, interest “accrues from the time of an actionable breach.” Kellman v Mosley, 60 AD3d at 457 (1<sup>st</sup> Dept. 2009); see generally Brushton-Moira Cent. Sch. Dist. v Fred H. Thomas Assocs., P.C., 91 NY2d 256 (1998); Love v State of New York, 78 NY2d 540 (1991). Thus, the plaintiff is entitled to statutory interest from October 17, 2019.

Accordingly, and upon the foregoing papers, it is

ORDERED that the plaintiff’s motion pursuant to CPLR 3215 for leave to enter a default judgment is granted, without opposition, as to the first and second causes of action of the complaint, and it is further

ORDERED that the Clerk shall enter judgment in favor of the plaintiff and against the defendants, jointly and severally, in the sum of \$191,800.02, plus costs and statutory interest from October 17, 2019.

This constitutes the Decision and Order of the court.

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

4/22/2022  
DATE

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER  
 REFERENCE