

<b>Strategic Funding Source, Inc. v Leming</b>
2022 NY Slip Op 31416(U)
April 27, 2022
Supreme Court, New York County
Docket Number: Index No. 651057/2021
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*

-----X

STRATEGIC FUNDING SOURCE, INC.

Plaintiff,

- v -

TERESA LEMING,

Defendant.

-----X

INDEX NO. 651057/2021

MOTION DATE 04/08/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17

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 two Revenue Based Factoring Agreements for the Purchase and Sale of Future Receivables (Agreements), dated January 26, 2015 and April 22, 2015, wherein plaintiff purchased \$27,000.00 of Buzz'N Brushes' future receivables generated in the course of its business. On April 23, 2015, plaintiff paid Buzz'N Brushes \$20,000.00, as the agreed upon purchase price for the receivables. Teresa Leming, (TL), owner of Buzz'N Brushes, executed a personal guaranty of Buzz'N Brushes' full performance under the Agreement. According to the Agreement, plaintiff was to collect 15% and 18% of the daily batch amount of receivables collected by Buzz'N Brushes, via Automated Clearing House (ACH) debits from TL's depositing account. Plaintiff asserts that by May 20, 2015, Buzz'N Brushes stopped depositing all of its receivables to the account. Plaintiff alleges of the \$27,000.00 of receivables purchased, Wireless has delivered a total of \$5966.54 in receivables to plaintiff leaving a balance of

\$21,033.26, of receivables outstanding under the Agreement. Plaintiff is also seeking additional fees due under the Agreement.

The summons and complaint were filed on February 15, 2021. TL was served, by conspicuous place service, at 193 Plumpjack Avenue, Henderson, Nevada 89002, defendants place of abode, on February 26, 2021. The process server made two prior attempts, one on February 23, 2021 at 7:06 pm and one on February 20, 2021 at 12:13 pm. A mailing was made to defendant at that address on March 1, 2021. An additional mailing, in accordance with CPLR §3215(g)(4)(i) was made on April 2, 2021.

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

### **PENDING MOTION**

On April 8, 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. 7), the affirmation of David Wolfson, Vice President of Risk

Management and Asset Recovery of plaintiff (NYSCEF Doc 6); a copy Agreement (NYSCEF Doc 9); demand letter (NYSCEF Doc 10); statement of transactions (NYSCEF Doc 11); a copy of the summons and complaint (NYSCEF Doc 12); affidavit of service (NYSCEF Doc 13); an affidavit of additional mailing of the summons and complaint (NYSCEF Doc 14); and a non-military affidavit (NYSCEF Doc 1615).

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 Teresa Leming. Plaintiff has established damages in the amount of \$36,173.26, consisting of \$21,033.26 in outstanding receivables, \$140.00 in returned debit fees, \$7500.00 in default fees and \$2500.00 in blocked account fees.

### CONCLUSION

Wherefore, it is hereby

ORDERED that plaintiff's motion seeking a default judgment against defendants Teresa Leming is granted; and it is further

ORDERED plaintiff is awarded a judgment in the amount of \$36173.26, with interest From February 15, 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

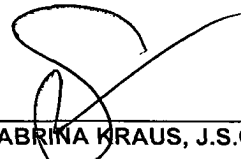
ORDERED the clerk shall enter judgment accordingly; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of

this order with notice of entry on defendant at 193 Plumpjack Avenue, Henderson, Nevada 89002, 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>4/27/2022</u> DATE	 SABRINA KRAUS, J.S.C.							
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE