

Port Auth. of N.Y. & N.J. v Reyes
2022 NY Slip Op 31442(U)
May 3, 2022
Supreme Court, New York County
Docket Number: Index No. 451325/2020
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

PORT AUTHORITY OF NEW YORK & NEW JERSEY

Plaintiff,

- v -

WILLIE REYES,

Defendant.

-----X

INDEX NO. 451325/2020

MOTION DATE 04/20/2022

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

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

BACKGROUND

Plaintiff commenced this action seeking unpaid tolls and administrative fees in the amount of \$30,992.00.

The summons and complaint were filed on June 3, 2020. Defendant has failed to appear or file an answer. The time within which the defendants may answer or otherwise move to respond to said complaint has expired and has not been extended.

PENDING MOTION

On April 20, 2022, plaintiff moved pursuant to CPLR §3215, for a default judgment against defendant, in the amount of \$30,992.00, for unpaid tolls and administrative fees. Defendant has failed to appear or submit opposition.

DISCUSSION

Plaintiff’s motion for a default judgment must be denied for the reasons stated below.

CPLR § 3215(c) provides, in pertinent part, that “if the plaintiff fails to take proceedings for the entry of judgment within one year after the default, the court shall not enter judgment

but shall dismiss the complaint as abandoned, without costs, upon its own initiative or on motion unless sufficient cause is shown why the complaint should not be dismissed.”

Plaintiff filed the summons and complaint on June 3, 2020 and served the same on or about June 23, 2020. Even taking into account the stay issued by the Governor’s Executive Order, due to the pandemic, plaintiff should have moved for a default judgment on or about November 2021. Plaintiff did not file the instant motion until March 18, 2022.

If assuming arguendo, that plaintiff is moving for a default based upon a default in a stipulation of settlement, pursuant to CPLR 3215(i), the motion still requires denial.

CPLR 3215(i) provides, in pertinent part, “where after commencement of an action, a stipulation of settlement is made, providing, in the event of failure to comply with the stipulation, for entry without further notice of a judgment in a specified amount with interest, if any, from a date certain, the clerk shall enter judgment on the stipulation and an affidavit as to the failure to comply with the terms thereof, together with a complaint or a concise statement of the facts on which the claim was based.”

The stipulation submitted in support of the motion is dated June 13, 2019, a year prior to the commencement of this action.

In addition, the notice of default sent to defendant also requires denial of the motion.

CPLR 2101 (c) provides:

Caption. Each paper served or filed shall begin with a caption setting forth the name of the court, the venue, the title of the action, the nature of the paper and the index number of the action if one has been assigned. In a summons, a complaint or a judgment the title shall include the names of all parties, but in all other papers it shall be sufficient to state the name of the first named party on each side with an appropriate indication of any omissions.

This requirement is reinforced in the court rules for the Civil Court of the City of New York, § 208.4 of which provides in pertinent part:

The party causing the first paper to be filed shall obtain an index number and communicate it forthwith to all other parties to the action. Thereafter such number shall appear on the outside cover and first page, to the right of the caption, of every paper tendered for filing in the action. Each such cover and first page also shall contain an indication of the county of venue and a brief description of the nature of the paper. In addition to complying with the provisions of CPLR 2101, every paper filed in court shall have annexed thereto appropriate proof of service on all parties where required ...

N.Y. Ct. R. 208.4 (McKinney)(Emphasis added).

Clearly, the intent of the statute is that it be clear to a defendant when a paper is served that it is in reference to this lawsuit. This is a reasonable requirement, particularly in actions where defendants, like the defendant in this case, are *pro se* and without the benefit of counsel.

Here, as a condition precedent to plaintiff's right to enter judgment pursuant to the stipulation of settlement, plaintiff was required to serve defendant with a notice of cure. It is essential that the party seeking a default judgment comply with the notice to cure provisions contained in a stipulation of settlement because it provides the defaulting party notice and an opportunity to cure the defects before the aggrieved party can enter judgment for what is typically a higher amount (*see 542 Holding Corp. v. Prince Fashions Inc.*, 46 AD3d 309, 310 [1st Dept 2007] [citations omitted] ["[t]he purpose of a notice to cure is to specifically apprise the [defendant] of claimed defaults in its obligations under the [stipulation of settlement] and of the [default provisions] of the [contract] if the claimed default is not cured within a set period of time"]; *see also Manhattan College v. Akinbola-Lee*, 2008 N.Y. Slip Op 50337(U) [Nassau Dist Ct]; *J.T.M. Group v. Fleischman*, 2001 N.Y. Slip Op 40456(U), 1 [App Term, 9th & 10th Jud Dists]). *CACV of Colorado, LLC v. Atekha*, 24 Misc. 3d 1250(A) (Civ. Ct. 2009).

The "notice" annexed to plaintiff's moving papers is a printout of an email, it has no caption and does not bear the index number of this action. It is not clear from the face of the document that it specifically refers to this action, and it fails to meet the CPLR requirements for a paper served on a party.

Plaintiff has failed to establish entitlement to a default judgment.

CONCLUSION

Wherefore, it is hereby

ORDERED that plaintiff's motion seeking a default judgment against defendant Willie Reyes, is denied; and it is further

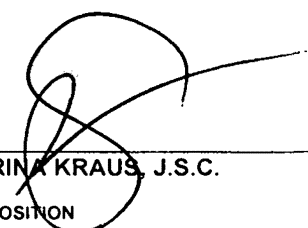
ORDERED that the complaint is dismissed as abandoned pursuant to CPLR 3215(c); and it is further

ORDERED that 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 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

This constitutes the decision and order of the court.

5/3/2022 DATE	 SABRINA KRAUS, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE