

**American Express Natl. Bank v Allal Consulting
Servs., Inc.**

2022 NY Slip Op 31452(U)

May 2, 2022

Supreme Court, New York County

Docket Number: Index No. 655531/2020

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

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AMERICAN EXPRESS NATIONAL BANK,
Plaintiff,

INDEX NO. 655531/2020

MOTION DATE 04/19/2022

MOTION SEQ. NO. 001

- v -

ALLAL CONSULTING SERVICES, INC. D/B/A ACS INC,
FRANCOIS ALLAL

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22

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

BACKGROUND

Plaintiff commenced this action seeking \$43,708.92, plus interest and costs, based on the allegation that defendant failed to make payments due on a credit card issued by plaintiff.

Plaintiff alleges Allal Consulting Services, Inc. d/b/a ACS Inc is a business entity and Francois Allal (FA) is a natural person residing at 107 North Swall Drive, Apartment 203, Los Angeles, CA 90048.

Defendant(s) applied for enrollment in plaintiff's Working Capital Terms program. Plaintiff's Working Capital Terms program offers enrollees the opportunity to apply for short-term commercial loans to be paid directly to eligible vendors of the business. Plaintiff provided to defendant(s) a copy of the Working Capital Terms Program and Loan Agreement (Agreement) that would govern such an account and each Loan and Defendant(s) acknowledged acceptance of the Agreement via electronic signature. Plaintiff accepted defendant(s)' application, and provided

defendant(s) a Working Capital Terms account, with an account number ending in 1007, which in turn granted defendant(s) the right to apply for loan(s) under said account number.

Defendant(s) subsequently applied for loan(s) pursuant to the Agreement. Plaintiff approved defendant(s)' application for loan(s), and disbursed funds in accordance with the Agreement and direction of defendant(s). Plaintiff alleges, defendant(s)' Account remains due and owing in the total amount of \$43,708.92.

The summons and complaint were filed on October 22, 2020.

Plaintiff asserts defendants were duly served on December 23, 2020. However, after reviewing the affidavits of service, plaintiff found a potential error with the affidavit of service, regarding service on FA. Specifically, FA was served via the conspicuous place service, and pursuant to CPLR § 308 (2), a copy of the summons and complaint is supposed to be mailed within twenty (20) days. However, the date on which this mailing occurred was omitted from the affidavit of service. The process server later indicated that the server fulfilled this mailing requirement on January 13, 2021, which is twenty-one (21) days after the physical copy was delivered. Plaintiff, in order to fully comply with the CPLR, on March 23, 2021, instructed the process server to re-attempt service on FA. Plaintiff was ultimately able to re-serve AF so a few days later, on April 3, 2021—this time via personal service.

Defendants have failed to appear or file an answer, and the time in which to do so has not been extended.

PENDING MOTION

On April 19, 2022, plaintiff moved for an order extending the 120-day service deadline provided by CPLR 306-b *nunc pro tunc*, and declaring that defendant(s) were timely served; and directing the clerk to enter default judgment in favor of plaintiff, and against defendant(s), pursuant to CPLR 3215 in the amount of \$43,708.92 plus costs and disbursements.

Defendants have failed to appear or submit opposition.

DISCUSSION

Plaintiff's motion to extend time to serve nunc pro tunc is granted

CPLR § 306-b (f) provides, in pertinent part, service of the summons and compliant shall be made within 120 days of commencement of the action, and if it is not, “upon good cause shown or in the interest of justice” the court may extend the time for service.

“To establish the requisite good cause, reasonable diligence in attempting service must be shown, but the interest of justice is a broader standard, which does not require a showing of good cause, and permits the court to consider many factors (*Spath v Zack*, 36 A.D.3d 410 [1st Dept 2007] citing *Mead v. Singleman*, 24 A.D.3d 1142,[2005])”.

As AF was timely served, but plaintiff re-served to ensure full compliance with the CPLR, the court finds plaintiff has established reasonable diligence in attempting service, therefore the motion to extent time to serve is granted *nunc pro tunc*.

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].”

Plaintiff's motion for a default judgment as to defendants is granted

“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).

In support plaintiff submits in support the affirmation of, Carl E. Zapffe, Esq. (NYSCEF Doc 14), a copy of the summons and complaint (NYSCEF Doc 16), affidavit of service (NYSCEF Doc 17), notice as required by CPLR 3215(g) (NYSCEF Doc 18), affidavit of military investigation (NYSCEF Doc 19), affidavit of facts (NYSCEF Doc 20), Loan agreement (NYSCEF Doc 21), account statement (NYSCEF Doc 22). Plaintiff has established entitlement to a default judgment as against defendants.

CONCLUSION

Wherefore, it is hereby

ORDERED that plaintiff's motion seeking to extent time to serve *nunc pro tunc* and for a default judgment against defendants Allal Consulting Services, Inc. D/B/A ACS Inc and Francois Allal is granted; and it is further


ORDERED that the Clerk is directed to enter judgment in favor of plaintiff in the sum of \$43,708.92, with interest at the statutory rate from October 22, 2020, as calculated by the Clerk, together with costs and disbursements, as taxed by the Clerk; 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 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/supctmanh); and it is further

This constitutes the decision and order of the court.

<u>5/2/2022</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"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE