

**Pentagon Fed. Credit Union v Beyeeman Hacking Corp.**

2022 NY Slip Op 31683(U)

May 20, 2022

Supreme Court, New York County

Docket Number: Index No. 653144/2021

Judge: Nancy M. Bannon

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. NANCY BANNON PART 42

Justice

-----X

PENTAGON FEDERAL CREDIT UNION, AS SUCCESSOR BY MERGER TO PROGRESSIVE CREDIT UNION,

Plaintiff,

- v -

BEYEEMAN HACKING CORP., DEME HACKING CORP., ELIZABETH OSEI

Defendant.

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INDEX NO. 653144/2021

MOTION DATE 04/21/2022

MOTION SEQ. NO. 001

DECISION, ORDER + JUDGMENT ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 46

were read on this motion to/for JUDGMENT - DEFAULT

The plaintiff, Pentagon Federal Credit Union, as successor by merger to Progressive Credit Union (Pentagon), commenced this action against the defendants to recover damages for breach of certain promissory notes and guaranty agreements and replevin of the taxi medallions pledged as collateral for the notes. Pentagon now moves pursuant to CPLR 3215 for leave to enter a default judgment against the defendants, Elizabeth Osei (Osei), Beyeeman Hacking Corp. (Beyeeman), and Deme Hacking Corp. (Deme). No opposition is submitted. The motion 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 (see CPLR 3215[f]; Allstate Ins. Co. v Austin, 48 AD3d 720, 720)." Atlantic Cas. Ins. Co. v RJNJ Services, Inc., 89 AD3d 649 (2nd 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 (1st Dept. 2006). The proof submitted must establish a prima facie case. See Guzetti v City of New York, supra.

The plaintiff submits, inter alia, the affidavit of Cathyann Frank, the Director of Loss Mitigation and Member Business Loans for Pentagon, the subject notes, the subject guaranties, the subject security agreements, the relevant UCC-1 Financing Statements, and demand letters.

The plaintiff's submissions establish that on or about March 9, 2018, Osei executed a promissory note on behalf of Beyeeman and in favor of Pentagon in the principal sum of \$700,000.00 (the first loan). In connection with the first loan, Beyeeman entered into a Security Agreement, whereby certain collateral, including New York City Taxi Medallion Nos. 5N54 and 5N55 were pledged as security for the loan. Similarly, on or about April 24, 2018, Osei executed a promissory note on behalf of Deme and in favor of Pentagon in the principal sum of \$700,000.00 (the second loan). In connection with the second loan, Deme also entered into a Security Agreement, whereby certain collateral, including New York City Taxi Medallion Nos. 7K98 and 7K99 were pledged as security for the loan. Osei guaranteed both the first and second loan. Pentagon perfected its security interest in the subject collateral by filing UCC-1 Financing Statements.

Beyeeman and Deme subsequently defaulted on their obligations to Pentagon under the terms of the first and second loans by failing to pay the amounts due. Beyeeman's default began on August 9, 2019, leaving an unpaid principal balance of \$675,320.99 due and owing. Deme's default began on March 24, 2019, leaving an unpaid principal balance of \$685,047.71 due and owing. On or about March 6, 2021, Pentagon sent demand letters to the defendants advising them that they are in default and that the full amount under the loans is due and payable. The letters advise that if the defaults cannot be cured, the taxi medallions pledged as collateral for the first and second loans must immediately be turned over. The defendants have failed to cure their defaults and the sums stated above remain unpaid. Notwithstanding the foregoing, Beyeeman and Deme have not turned over possession of the subject taxi medallions.

Pentagon has established the facts underpinning its breach of contract claim by showing that there was "formation of a contract between the parties, performance by the plaintiff, the defendant's failure to perform, and resulting damage." Flomenbaum v New York Univ., 71 AD3d 80, 91 (1<sup>st</sup> Dept. 2009). Where, as here, a contractual obligation is a promissory note, a plaintiff meets its burden by proving the existence of the subject note and nonpayment according to its terms. See Bonds Financial, Inc. v Kestrel Technologies, LLC, 48 AD3d 230 (1<sup>st</sup> Dept. 2008). Pentagon further shows that the terms of the subject guaranty agreements are clear, unambiguous, absolute and unconditional (Citibank, N.A. v Uri Schwartz & Sons Diamonds Ltd., 97 AD3d 444 [1<sup>st</sup> Dept. 2012]) and, having defaulted in this action, the defendants have not shown, or even alleged, any fraud, duress or any other wrongful conduct by Pentagon in regard to the agreements. Indeed, having failed to answer, the defendants are "deemed to have admitted all factual allegations in the complaint and all reasonable inferences that flow from them." Woodson v Mendon Leasing Corp., 100 NY2d 62, 70-71 (2003).

Additionally, Pentagon demonstrates its entitlement to replevin of the subject taxi medallions by establishing that Beyeeman and Deme are in possession of the medallions and that Pentagon has a superior right. See Nissan Motor Acceptance Corp. v Scialpi, 94 AD3d 1067 (2<sup>nd</sup> Dept. 2012). More specifically, Pentagon shows that it lawfully holds the loans, Security Agreements, and UCC-1 Financing Statements, that the defendants defaulted thereunder by virtue of their non-payments, that the defendants Beyeeman and Deme are in

possession of the medallions, and that Pentagon has a right to possession and delivery of the medallions under the terms of the Security Agreements and UCC-1 Financing Statements.

As to the plaintiff's request for an award of contractual attorney's fees, the subject loan documents expressly provide for attorney's fees. In his affirmation, Mitchell D. Cohen, Esq. details the legal work he performed and billed, for a total of \$5,028.00, which can be divided in two to represent the work performed to enforce each of the two notes and related documents at issue in this action. Such amount is supported by a billing summary attached to Cohen's affirmation and, the court finds, constitutes a reasonable sum. See Matter of Freeman, 34 NY2d 1 (1974); Matter of Barich, 91 AD3d 769 (2<sup>nd</sup> Dept. 2012).

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; and it is further

ORDERED that the Clerk of the court shall enter a money judgment in favor of the plaintiff (i) on the first and third causes of action against defendants Beyeeman Hacking Corp. and Elizabeth Osei, jointly and severally, in the principal sum of \$675,320.99, plus accrued interest through April 1, 2021, in the sum of \$18,820.40, plus interest at the rate of 2% per annum from April 1, 2021, through the date of judgment, plus attorney's fees in the sum of \$2,514.00, and costs and disbursements; and (ii) on the fourth and sixth causes of action against defendants Deme Hacking Corp. and Elizabeth Osei, jointly and severally, in the principal sum of \$685,047.71, plus accrued interest through April 1, 2021, in the sum of \$22,767.52, plus interest at the rate of 2% per annum from April 1, 2021, through the date of judgment, plus attorney's fees in the sum of \$2,514.00, and costs and disbursements; and it is further

ORDERED that the plaintiff shall serve a copy of this order and judgment upon all defendants at their last known address by regular and certified mail, return receipt requested, within twenty (20) days of this order and judgment; and it is further

ADJUDGED that the plaintiff Pentagon Federal Credit Union, as Successor by Merger to Progressive Credit Union, has a right of possession of New York City Taxi Medallion Nos. 5N54 and 5N55, superior to that of defendant Beyeeman Hacking Corp.; and it is further

ORDERED that the plaintiff, Pentagon Federal Credit Union, as Successor by Merger to Progressive Credit Union, shall have immediate and permanent possession of New York City Taxi Medallion Nos. 5N54 and 5N55 from defendant Beyeeman Hacking Corp. and defendant Beyeeman Hacking Corp. shall cooperate with the plaintiff and deliver New York City Taxi Medallion Nos. 5N54 and 5N55 to the plaintiff within thirty (30) days of the service this order and judgment upon it; and it is further

ORDERED that if defendant Beyeeman Hacking Corp. fails to deliver New York City Taxi Medallion Nos. 5N54 and 5N55 to the plaintiff within thirty (30) days of the service this order and judgment upon it, the sheriff or other authorized official of any county where the New York City Taxi Medallion Nos. 5N54 and 5N55 are found are hereby directed to seize and immediately deliver same to the plaintiff without bond, and if New York City Taxi Medallion Nos. 5N54 and 5N55 are not delivered to the sheriff or other authorized official, the sheriff or other authorized official may break open, enter, and search for the New York City Taxi Medallion Nos. 5N54 and 5N55 wherever New York City Taxi Medallion Nos. 5N54 and 5N55 may be located; and it is further

ADJUDGED that the plaintiff Pentagon Federal Credit Union, as Successor by Merger to Progressive Credit Union, has a right of possession of New York City Taxi Medallion Nos. 7K98 and 7K99, superior to that of defendant Deme Hacking Corp.; and it is further

ORDERED that the plaintiff, Pentagon Federal Credit Union, as Successor by Merger to Progressive Credit Union, shall have immediate and permanent possession of New York City Taxi Medallion Nos. 7K98 and 7K99 from defendant Deme Hacking Corp. and defendant Deme Hacking Corp. shall cooperate with the plaintiff and deliver New York City Taxi Medallion Nos. 7K98 and 7K99 to the plaintiff within thirty (30) days of the service this order and judgment upon it; and it is further

ORDERED that if defendant Deme Hacking Corp. fails to deliver New York City Taxi Medallion Nos. 7K98 and 7K99 to the plaintiff within thirty (30) days of the service this order and judgment upon it, the sheriff or other authorized official of any county where the New York City Taxi Medallion Nos. 7K98 and 7K99 are found are hereby directed to seize and immediately deliver same to the plaintiff without bond, and if New York City Taxi Medallion Nos. 7K98 and 7K99 are not delivered to the sheriff or other authorized official, the sheriff or other authorized official may break open, enter, and search for the New York City Taxi Medallion Nos. 7K98 and 7K99 wherever New York City Taxi Medallion Nos. 7K98 and 7K99 may be located; and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision, Order and Judgment of the court.

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

5/20/2022  
DATE

CHECK ONE:

CASE DISPOSED  
GRANTED

DENIED

NON-FINAL DISPOSITION  
GRANTED IN PART

OTHER