

<b>Biggs v HCL Am., Inc.</b>
2022 NY Slip Op 31904(U)
June 15, 2022
Supreme Court, New York County
Docket Number: Index No. 656852/2021
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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SAMUEL R BIGGS,

Plaintiff,

- v -

HCL AMERICA, INC, HCL MORTGAGE HOLDING, LLC,  
CHARLES S SANDERS, THE SANDERS FAMILY  
LEGACY TRUST, JOHN DOES

Defendants.

INDEX NO. 656852/2021

MOTION DATE 03/29/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22

were read on this motion for DEFAULT JUDGMENT.

Plaintiff Samuel R. Biggs (“Plaintiff” or “Biggs”) moves for default judgment pursuant to CPLR § 3215 against Defendant Charles S. Sanders as an Individual and in his capacity as Trustee of The Sanders Family Legacy Trust (collectively, “Sanders Defendants”) for failure to timely appear, answer, or otherwise move with respect to the Complaint. Plaintiff seeks a judicial declaration of Plaintiff’s rights under a Unit Purchase Agreement with Defendants HCL America, Inc. (“HCL”) and HCL Mortgage Holding, LLC (“HCLM”) (collectively, “HCL”) that Sanders have no rights to contractual payments by HCL. For the reasons described below, the motion for default judgment is **granted**.

Plaintiff has submitted un rebutted evidence demonstrating compliance with the requirements of CPLR § 3215 through the Affidavit of Samuel R. Biggs, sworn to on March 17, 2022, together with the exhibits annexed thereto (NYSCEF 13–19), including the Complaint setting forth the facts establishing Plaintiff’s claim. Plaintiff also submitted proof of service of

the Summons and Complaint, and proof of the Sanders Defendants' failure to answer or appear (*see* NYSCEF 9–12). No opposition has been filed.

“A default judgment in a declaratory judgment action will not be granted on default and pleadings alone for it is necessary that plaintiff establish a right to a declaration” (*Dole Food Co., Inc v Lincoln Gen. Ins. Co.*, 66 AD3d 1493, 1494 [4th Dept 2009] [internal quotations omitted]). Further, such relief should be denied in cases where it would “clearly affects the rights of other parties not alleged to be in default” (*Merchants Ins. Co. of N.H. v Long Is. Pet Cemetery*, 206 AD2d 827 [4th Dept 1994] [internal citations omitted]).

Here, Plaintiff is seeking a declaration establishing his rights under the Agreement with HCL. Specifically, Plaintiff asserts he was assigned rights from Charles Sanders and the Sanders Trust held by Urban Settlement Services, LLC (“USS”) and J.P. Holdings, LLC (“UPH”) under a Unit Purchase Agreement (“UPA”), later amended on August 23, 2017 (“ARUPA”). Under the UPA, USS and UPH sold their ownership interest in Urban Fulfillment Services, LLC (“UFL”) to the HCL Parties. The Agreement contained a four-year earn out (“Earn-Out”) provision for continuing payments of the purchase price to USS and UPH, based on the operating performance of UFL. The ARUPA provides “[f]or the avoidance of doubt, in the event a Seller [USS or UPH] is liquidated and dissolved, then references in this Section 5 [sic] of this Exhibit “A” to such Seller shall be references to Sanders” (NYSCEF 17 § 4(c)).

Plaintiff submits that the HCL Defendants concede that Earn-Out Payments are owed and that the parties have reached a proposed monetary settlement. However, HCL has objected to remitting such payments to Plaintiff without a waiver by the Sanders Defendants (NYSCEF 18, 19) or a judicial determination which makes clear that Plaintiff's interpretation of the ARUPA is correct and only Plaintiff is entitled to the Earn-Out payment (NYSCEF 4 ¶ 32).

Since HCL asserts in their Answer that they do not take a position as to who is the proper Seller (Plaintiff or Sanders) under the ARUPA for purposes of conducting the Years 3 and 4 Earn-Out Determination (NYSEF 4 ¶ 32), and since there is a proposed monetary settlement in which HCL agrees to compensate with respect to the Earn-Out Payments owed, the declaration sought will not adversely affect the rights of HCL, who has responded to the claims against them.

Further, Plaintiff submits a certificate of good standing for USS and UHP (NYSCEF 16). Neither Sanders, by virtue of default, nor HCL, by virtue of its Answer, dispute that USS and UHP have not, as a matter of law, been “dissolved.” Therefore, Plaintiff has sufficiently established the merit of his position for purposes of this motion.

The Sanders Defendants may seek a vacatur of the instant default judgment if they can satisfy the requirements of CPLR § 5015, CPLR § 317, or any other relevant law.

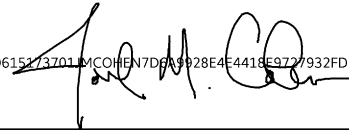
Accordingly, it is

**ORDERED** that Plaintiff’s Motion for a Default Judgment against Charles S. Sanders as an Individual and in his capacity as Trustee of The Sanders Family Legacy Trust (collectively, the “Sanders Defendants”) is **GRANTED**; the Clerk of the Court is directed to enter a judgment in favor of Plaintiff declaring that the Sanders Defendants have no rights to any Earn-Out Payments or Year 3 proposed settlement; and it is further

**ORDERED** that Plaintiff’s counsel shall serve a copy of this order with notice of entry on Defendants within five (5) days from the date of this Order.

This constitutes the decision and order of the Court.

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JOEL M. COHEN, J.S.C.

6/15/2022

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE