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| <b>Port Auth. of N.Y. &amp; N.J. v Little</b>  |
| 2022 NY Slip Op 33845(U)   |
| November 14, 2022  |
| Supreme Court, New York County   |
| Docket Number: Index No. 450477/2021   |
| Judge: Louis L. Nock   |
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. LOUIS L. NOCK PART 38M

*Justice*

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PORT AUTHORITY OF NEW YORK & NEW JERSEY,

Plaintiff,

- v -

MIMI LITTLE,

Defendant.

-----X

INDEX NO. 450477/2021

MOTION DATE 07/19/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18

were read on this motion for

DEFAULT JUDGMENT

LOUIS L. NOCK, J.

Upon the foregoing documents, plaintiff's motion for entry of a default judgment is granted, as follows.

Plaintiff commenced this action by summons and complaint filed March 1, 2021, seeking a judgment in the principal sum of \$23,376 for unpaid tolls incurred, in the aggregate, on 359 occasions. The theory of the complaint is that defendant improperly used exclusive E-Z Pass toll collection lanes, without proper E-Z Pass authorization, to the extent of the accrual of such sum in unpaid tolls. The details of same are well documented in plaintiff's submitted Violation Citation Detail (*see*, Affirmation of Derek Soltis, Esq., Exh. A).

The affidavits of service are regular on their faces. Defendant has failed to answer the complaint or otherwise appear. An affirmation of second mailing preparatory to plaintiff's within motion for a default judgment is regular on its face (*see, id.*, Exh. C). Although,

technically, plaintiff's time to move for a default judgment expired April 26, 2022,<sup>1</sup> plaintiff's counsel attests to two circumstances which led to the filing of the within motion in a little under three months afterward, on July 19, 2022. One reason relates to "an array of issues in [the Port Authority's] handling of numerous actions and conferences, in light of the unprecedented Coronavirus pandemic" (*id.*, at 11). A second reason – equally as important as the first – relates to the fact that plaintiff had reached out to defendant on no less than six occasions by successive email communications commencing April 18, 2022 (*id.*, at 10-11), and also afforded defendant opportunities to resolve the matter (*see, id.*, at 10; *id.*, Exh. E).<sup>2</sup>

Although plaintiff's motion comes somewhat after the one-year deadline for moving for a default judgment (CPLR 3215) – i.e., just under three months after – this court is not prepared to view that delay as a statutory abandonment of plaintiff's right to obtain redress for defendant's indebtedness (*see, id.* [c]) in light of its Coronavirus logisticalities; its good faith attempts at avoiding litigation; and the relatively modest timespan of its delay, in this court's opinion (*see, id.* [sufficient cause for delay in moving for a default judgment prevents a determination of abandonment of suit]; *Nan Yang v Rong Chen*, 2021 NY Slip Op 30754 [U] at \*\*5-\*\*6, 2021 NY Misc LEXIS 1065, \*8-\*9 [Sup Ct, NY County, Mar. 8, 2021] ["Attorneys and the courts have been operating in uncharted territory during the pandemic . . . . These are extraordinary times, and the drastic outcome of dismissal . . . should not result in denying plaintiff [its] day in court . . . ."]).

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<sup>1</sup> The summons and complaint were served March 8, 2021, with follow-up mailing the following day pursuant to CPLR 308 (2). Service was complete on March 21, 2021 – ten days after the filing of proof of service (*id.*). Per CPLR 3215 (c), the technical time to move for a default judgment expired April 26, 2022. Plaintiff filed its within motion for a default judgment a little under three months afterward, on July 19, 2022.

<sup>2</sup> Plaintiff's Default Notices to defendant cited defendant for "Toll evasion" and "theft of services"; but offered defendant opportunities "to discuss" the matter, and also provided plaintiff's counsel's email address for that exact purpose (Affirmation of Derek Soltis, Esq., Exh. E).

A plaintiff that seeks entry of a default judgment for a defendant's failure to answer must submit proof of service of the summons and complaint upon the defendant, proof of the facts constituting the claim, and proof of the defendant's default (CPLR 3215). "The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts" (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). "[D]efaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them" (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). The court finds that plaintiff has satisfied its burden on the within motion for a default judgment, based on its supporting papers, and, therefore, grants it.

The complaint seeks interest on the principal judgment amount (*see also*, CPLR 5001). The court fixes the accrual date for interest from the last date listed in plaintiff's Violation Citation Detail (NYSCEF Doc. No. 8) – February 2, 2020.

Accordingly, it is

ORDERED that plaintiff's motion for a default judgment is granted; and, accordingly, it is

ORDERED that the Clerk is directed to enter judgment for plaintiff Port Authority of New York and New Jersey, having an office at 4 World Trade Center, 150 Greenwich Street, 24<sup>th</sup> Floor, New York, New York 10006, and against defendant Mimi Little, having a last known address at 530 144<sup>th</sup> Street, Apt. 25, New York, New York 10031, for the principal sum of \$23,376, plus interest accrued thereon at the statutory rate from February 2, 2020, and continuing to so accrue until the date of satisfaction of judgment.

This will constitute the decision and order of the court.

ENTER:

*Louis L. Nock*

|                           |                                     |                            |                          |                          |                              |                 |                          |           |
|---------------------------|-------------------------------------|----------------------------|--------------------------|--------------------------|------------------------------|-----------------|--------------------------|-----------|
| <u>11/14/2022</u><br>DATE |                                     |                            |                          |                          | <u>LOUIS L. NOCK, J.S.C.</u> |                 |                          |           |
| CHECK ONE:                | <input checked="" type="checkbox"/> | CASE DISPOSED              |                          | <input type="checkbox"/> | NON-FINAL DISPOSITION        |                 |                          |           |
|                           | <input checked="" type="checkbox"/> | GRANTED                    | <input type="checkbox"/> | DENIED                   | <input type="checkbox"/>     | GRANTED IN PART | <input type="checkbox"/> | OTHER     |
| APPLICATION:              | <input type="checkbox"/>            | SETTLE ORDER               |                          | <input type="checkbox"/> | SUBMIT ORDER                 |                 | <input type="checkbox"/> | REFERENCE |
| CHECK IF APPROPRIATE:     | <input type="checkbox"/>            | INCLUDES TRANSFER/REASSIGN |                          | <input type="checkbox"/> | FIDUCIARY APPOINTMENT        |                 | <input type="checkbox"/> | REFERENCE |