

Avanza Group LLC v Kingdom Logistics, LLC

2023 NY Slip Op 31303(U)

April 18, 2023

Supreme Court, Kings County

Docket Number: Index No. 520866/2021

Judge: Francois A. Rivera

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 18th day of April 2023

HONORABLE FRANCOIS A. RIVERA

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THE AVANZA GROUP LLC,

Plaintiff

DECISION & ORDER
Index No. 520866/2021

-against-

KINGDOM LOGISTICS, LLC, AND SCOTT ANDREW HAIRE,

Defendants

-----X

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed by plaintiff The Avanza Group LLC (hereinafter AGL or plaintiff) on December 29, 2022, under motion sequence two for an order pursuant to CPLR 3215 granting AGL a default judgment against Kingdom Logistics, LLC (hereinafter the Corporate defendant) and Scott Andrew Haire (hereinafter the Guarantor) (hereinafter collectively as the defendants) for failure to comply with a settlement agreement. This motion was unopposed.

- Notice of Motion
- Affirmation in Support
- Exhibits A-D

BACKGROUND

On August 16, 2021, AGL commenced the instant action by filing a summons and complaint with the Kings County Clerk's office. The complaint alleges sixty-nine allegations of fact in support of nine causes of action. The first cause of action is for breach of contract on agreement one. The second is for breach of a guaranty of agreement one. The third is for unjust enrichment on agreement one. The fourth is for breach of contract on agreement two. The fifth is for breach of a guaranty of agreement two. The sixth is for unjust enrichment on agreement

two. The seventh is for breach of contract on agreement three. The eighth is for breach of a guaranty of agreement three. The ninth is for unjust enrichment on agreement three.

On September 13, 2021, the defendants interposed and filed a joint answer with counterclaims. On November 12, 2021, AGL filed a reply to the defendants' counter claim.

The complaint alleges the following salient facts. On or about March 24, 2021, AGL and the defendants entered into an agreement (hereinafter Agreement No. 1) whereby AGL agreed to purchase all rights to Corporate defendant's future receivables having an agreed upon value of \$750,000.00. Pursuant to Agreement No. 1, Corporate defendant agreed to have a bank account approved by AGL from which Corporate defendant authorized AGL to make daily ACH withdrawals until \$750,000.00 was fully paid to AGL.

In addition, the Guarantor agreed to guarantee all amounts owed to AGL from defendants upon a breach in performance by Corporate defendant. AGL remitted the purchase price for the future receivables to Corporate defendant as agreed. Initially, Corporate defendant met its obligations under Agreement No. 1. The Corporate defendant stopped making its payments to AGL and otherwise breached agreement one by intentionally impeding and preventing AGL from making the agreed upon ACH withdrawals from the bank account while conducting regular business operations. The Corporate defendant has made payments totaling \$631,350.00, leaving a balance of \$118,650.00. Defendants also incurred a default fee in the amount of \$5,000.00.

Despite AGL's demand, the Corporate defendant has failed to pay the amounts due and owing under Agreement No. 1. Additionally, the guarantor is responsible for all amounts incurred because of any default of the Corporate defendant. There remains a balance due and to

AGL on Agreement No. 1 in the amount of \$123,650.00, plus interest, costs, disbursements, and attorney's fees.

On or about March 31, 2021, AGL and defendants entered into another agreement (hereinafter Agreement No. 2) whereby AGL agreed to purchase all rights to the Corporate defendant's future receivables having an agreed upon value of \$300,000.00 Pursuant to Agreement No. 2, defendants agreed to have a bank account approved by AGL from which the Corporate defendant authorized AGL to make daily ACH withdrawals until the amount of \$300,000.00 was fully paid. In addition, the Guarantor agreed to guarantee any, and all amounts owed to AGL from Corporate defendant upon a breach in performance by the Corporate defendant.

AGL remitted the purchase price for the future receivables to the Corporate defendant as agreed. Initially, the Corporate defendant met their obligations under Agreement No. 2. AGL alleges that the Corporate defendant stopped making its payments and breached Agreement No. 2 by intentionally impeding and preventing AGL from making the agreed upon ACH withdrawals from the bank account while conducting regular business operations.

The Corporate defendant made payments totaling \$202,000.00, leaving a balance of \$98,000.00. They also incurred a default fee in the amount of \$5,000.00. Despite AGL's demand, the Corporate defendant has failed to pay the amounts due under Agreement No. 2. Additionally, the Guarantor is responsible for all amounts incurred because of any default of the Corporate defendant. There remains a balance due to AGL on Agreement No. 2 in the amount of \$103,000.00, plus interest, costs, disbursements, and attorney's fees.

On or about April 16, 2021, AGL and the defendants entered into another agreement (hereinafter Agreement No. 3) whereby AGL agreed to purchase all rights to defendants' future receivables having an agreed upon value of \$600,000.00. Pursuant to Agreement No. 3, the Corporate defendant agreed to have a bank account approved by AGL from which they authorized AGL to make daily ACH withdrawals until \$600,000.00 was fully paid to AGL. In addition, the guarantor agreed to guarantee any, and all amounts owed to AGL upon a breach in performance by the Corporate defendant.

AGL remitted the purchase price for the future receivables to the Corporate defendant as agreed. Initially, the Corporate defendant met their obligations under Agreement No. 3. Defendants stopped making its payments to AGL and otherwise breached agreement three by intentionally impeding and preventing AGL from making the agreed upon ACH withdrawals from the Bank Account while conducting regular business operations. Although the Corporate defendant made payments totaling \$100,000, there is a remaining balance of \$500,000.00. Additionally, the Corporate defendant has incurred a default fee in the amount of \$5,000.00. As with the prior Agreements, the Guarantor is responsible for all amounts incurred because of any default of the Corporate defendant. There remains a balance due and owing to AGL on Agreement three in the amount of \$505,000.00 plus interest, costs, disbursements, and attorney's fees.

MOTION PAPERS

AGL's motion papers consist of a notice of motion, an affirmation by Jeffrey Zachter, AGL's counsel (hereinafter Zachter), and four exhibits labeled A through D. All six documents were filed with the NYSCEF system on December 29, 2022, by Zachter. Exhibit A is a copy of the summons and complaint. Exhibit B is a copy of a settlement agreement. Exhibit C is

denominated as a Notice of default. Exhibit D is denominated as an affidavit of non-military service.

LAW AND APPLICATION

On April 4, 2022, AGL filed a stipulation of settlement with the Kings County Clerk's office. The stipulation was signed by Scott Andrew Haire, individually and on behalf of Kingdom Logistics, LLC and by Frank A. Scarso, individually and on behalf of The Avanza Group LLC. The stipulation of settlement is annexed as exhibit B to the instant motion. Annexed as exhibit D to the motion is a letter denominated as a notice of default. According to the affirmation of AGL's counsel, the notice of default was sent to the defendants' attorney by e-mail addressed to kmiller@frostmillerllp.com. The notice stated that the defendants were in default of the settlement agreement and set a date of March 16, 2022, for the defendants to cure the default. AGL's counsel averred that the defendants did not cure the default.

By notice of motion filed on December 29, 2022, AGL has moved for an order pursuant to CPLR 3215 for a default judgment against the defendants based on the defendants' alleged failure to comply with the settlement agreement. CPLR 3215(a) provides in pertinent part as follows: "[w]hen a defendant has failed to appear, plead, or proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed, the plaintiff may seek a default judgment against him."

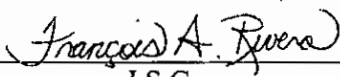
A default judgment does not lie on a purported breach of a settlement agreement. Such a breach is neither a failure to appear, plead or proceed to trial of an action reached and called for trial. Nor, at the case at bar, does it constitute a violation of a Court order for which dismissal may be directed for any other neglect to proceed. Accordingly, the motion is denied.

CONCLUSION

The motion by plaintiff The Avanza Group LLC for an order pursuant to CPLR 3215 granting plaintiff a default judgment against defendants Kingdom Logistics, LLC and Scott Andrew Haire based on their failure to comply with a settlement agreement is denied.

The foregoing constitutes the decision and order of the Court.

ENTER:



J.S.C.

**HON. FRANCOIS A. RIVERA
J.S.C.**