

**Forum Gallery Inc. v Spirits Fin. Corp.**

2023 NY Slip Op 34531(U)

December 23, 2023

Supreme Court, New York County

Docket Number: Index No. 653573/2023

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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|---|---------------------------------------|-----------------------------------|
| FORUM GALLERY INC.,                               | <b>INDEX NO.</b>                      | <u>653573/2023</u>                |
| Plaintiff,  |                                       |                                   |
| - v -   | <b>MOTION DATE</b>                    | <u>11/13/2023,<br/>11/13/2023</u> |
| SPIRITS FINANCIAL CORP., ANA MARIA BRAVO<br>CAMUS | <b>MOTION SEQ. NO.</b>                | <u>001 002</u>                    |
| Defendants.                                       | <b>DECISION + ORDER ON<br/>MOTION</b> |                                   |

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82

were read on this motion for DEFAULT JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 53, 54, 55, 56, 57, 58, 59, 60, 61, 62

were read on this motion to COMPEL.

Defendant in interpleader and crossclaim plaintiff Ana María Bravo Camus (“Camus”) moves for default judgment against defendant in interpleader and crossclaim Defendant Spirits Financial Corp. (“Spirits Financial”) pursuant to CPLR 3215 for failure to appear, answer, or otherwise respond to Camus’ Crossclaims in this action. Defendant Spirits Financial opposes this motion on the grounds that the Court lacks personal jurisdiction over Spirits Financial and in the alternative, cross-moves for an order pursuant to New York CPLR § 3012(d) compelling Camus to accept service of Defendant Spirits Financial’s Answer and Affirmative Defenses. For the following reasons, Camu’s motion is denied, and Spirits Financial’s cross-motion is granted.

To establish entitlement to default judgment under CPLR § 3215, a plaintiff must submit proof of service of the summons and complaint, proof of the facts constituting the claim and the amount due, and proof of the defendant's default in answering, appearing, or making a motion (*Gantt v N. Shore-LIJ Health Sys.*, 140 AD3d 418 [1st Dept 2016]). Here, Camus submitted evidence demonstrating compliance with the requirements of CPLR 3215 by submitting the Summons, Complaint, Amended Complaint, and Answer with Crossclaims, proof of service of the pleadings on Spirit Financial's registered agent for service of process, Andrés Blanco, dated August 25, 2023, and an affidavit by Camus setting forth the facts constituting the Crossclaims against Spirits Financial (*see* NYSCEF 12, 13, 17, 82). Spirits Financial did not answer the Crossclaims within 30 days of August 25, 2023.

“In order to successfully oppose a default judgment, a defendant must demonstrate a justifiable excuse for his default and a meritorious defense” (*ICBC Broadcast Holdings-NY, Inc. v Prime Time Adv., Inc.*, 26 AD3d 239, 240 [1st Dept 2006]). However, if jurisdiction is not obtained over the defaulting party, “neither a reasonable excuse nor a meritorious defense need be demonstrated” (*Eur. Am. Bank v Legum*, 248 AD2d 206, 208 [1st Dept 1998]; *Ortiz v Santiago*, 303 AD2d 1, 4 [1st Dept 2003]). Spirits Financial argues that personal jurisdiction was not obtained over it because Camus failed to comply with all the requirements set forth in BCL § 307. This argument fails. CPLR 311 provides for two alternative methods of service: a corporation may be personally served by delivery of the summons to its registered, or it “may also” be served via the Secretary of State using the method provided by BCL § 307 (CPLR 311(a)(1)). Where, as here, a corporation is personally served through its registered agent, the requirements of BCL § 307 do not apply (*Hessel v Goldman, Sachs & Co.*, 281 AD2d 247, 247–48 [1st Dept 2001]).

As noted, the pleadings were served on Spirits Financial’s registered agent for service of process, Andrés Blanco.<sup>1</sup> Although Spirits Financial argues that Mr. Blanco was removed as the registered agent on March 3, 2022 (NYSCEF 60) and Spirits Financial has not had any interaction with Blanco since 2021 (NYSCEF 62 [Memo Opp.] at 13), as Camu argues, Spirits Financial does not support this argument with evidence demonstrating that Spirits Financials made that change with the Florida Secretary of State, as required (Fla Stat § 607.0502), nor does Spirits Financial argue that it designated a new individual as its registered agent, as required under Florida law (Fla Stat § 607.0501 [“Each corporation shall designate and continuously maintain in this state . . . (b) A registered agent”]). To the contrary, Camu submits documentary evidence showing that on March 15, 2022—two weeks after the resolution was allegedly executed—Spirits Financial filed an Amendment to its Articles of Incorporation affirming that Blanco was an officer and director of the company and did not amend its registered agent (NYSCEF 65). Thus, this Court obtained personal jurisdiction over Spirits Financial when the suit papers were personally delivered to its “agent authorized by appointment or by law to receive service.”

The next issue is whether Spirits Financial has demonstrated a justifiable excuse for his default and a meritorious defense. Although service was properly completed, the Court credits Spirits Financial’s representation that it genuinely believed it had not been served and accepts

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<sup>1</sup> The lack of physical description of Blanco in the proof of service is not a jurisdictional defect (*see Van Wert v Black & Decker Inc.*, 246 AD2d 773, 775 [3d Dept 1998] [finding lack of physical description of the person served is not a jurisdictional defect, if in fact service was properly made]), and in any event, Camus has submitted an amended proof of service (*Summitbridge Credit Investments, LLC v Wallace*, 128 AD3d 676, 677 [2d Dept 2015] [“[P]laintiff’s submission of supplemental affidavits of service properly cured any deficiencies in the originals”]).

that as a rational explanation for the delay in responding to the Crossclaims. Further, the delay in answering was brief (*see Settles v OneWest Bank*, 186 AD3d 1551, 1553 [2d Dept 2020]; *Harris v City of New York*, 30 AD3d 461 [2d Dept 2006]). Finally, Plaintiff has not identified any prejudice from the delay. This action was commenced in July 2023, these two motions—which are the first filed in this case—were filed in October 2023. Spirits Financial filed their Answer on October 16, 2023 (NYSCEF 52).

To be clear, the Court does not countenance dilatory behavior. While Spirits Financial’s explanation for its failure to meet deadlines is plausible, the Court expects it will not be repeated. In the end, however, public policy favors the resolution of cases on the merits (*Bunch v Dollar Budget, Inc.*, 12 AD3d 391 [2d Dept 2004]). Given that the delay in answering was brief, that the default was not willful, and the lack of prejudice to Camu, Spirits Financial should be “granted an opportunity to defend plaintiffs’ claims on the merits” instead of having those claims be resolved on default (*Naber Electric v Triton Structural Concrete, Inc.*, 160 AD3d 507, 508 [1st Dept 2018]).

Accordingly, it is

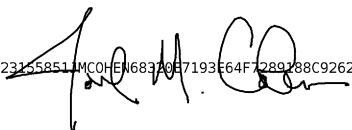
**ORDERED** that Camu’s motion for default judgment (Mot. Seq. 001) is **DENIED**; it is further

**ORDERED** that Spirits Financial’s cross-motion to compel acceptance of their Answer filed at NYSCEF 50 (Mot. Seq. 002) is **GRANTED**, and the Answer is accepted; it is further

**ORDERED** that the parties appear for a preliminary conference on January 9, 2024, at 10:00 a.m., with the parties circulating dial-in information to chambers at SFC-Part3@nycourts.gov in advance of the conference;<sup>2</sup> it is further

**ORDERED** that if Camu seeks to maintain NYSCEF Document Numbers 66-78 under seal, Camu must file a formal motion to seal those documents in accordance with this Court’s Part Rules.

This constitutes the decision and order of the Court.

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JOEL M. COHEN, J.S.C.

12/23/2023  
DATE

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|-----------------------|--|--|
| CHECK ONE:            | <input type="checkbox"/> CASE DISPOSED                           | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION                          |
|                       | <input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED | <input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER |
| APPLICATION:          | <input type="checkbox"/> SETTLE ORDER                            | <input type="checkbox"/> SUBMIT ORDER  |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN              | <input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE  |

<sup>2</sup> If the parties agree on a proposed preliminary conference order in advance of the conference date (consistent with the guidelines in the Part 3 model preliminary conference order, available online at <https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/Part3-Preliminary-Conference-Order.pdf>), they may file the proposed order and email a courtesy copy to chambers with a request to so-order in lieu of holding the conference.