

Bank of India, N.Y. Branch v Anaya Gems, Inc.

2024 NY Slip Op 30861(U)

March 11, 2024

Supreme Court, New York County

Docket Number: Index No. 655240/2018

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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BANK OF INDIA, NEW YORK BRANCH, ALLAHABAD
 BANK, and HONG KONG BRANCH,

Plaintiffs,

- v -

ANAYA GEMS, INC., ANSHUL GANDHI, AJAY GANDHI,
 DINIKA A. GANDHI, RAJUL A. GANDHI, STARLIGHT
 DESIGNS, SDC D/B/A SUPER DIAMOND, DNM,
 MICHAEL PASQUAL, MICHAEL SCHEINMAN,
 MANJUSAKA JEWELERS CO. LIMITED, MARS
 VENTURE LTD., SINO STERLING, DIAGEM, JEWEL
 ROUGH N.A., and DIVINE ENTERPRISES LTD.,

Defendants.

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 013) 284, 285, 286, 287,
 288, 289

were read on this motion to/for

JUDGMENT - DEFAULT

Upon the foregoing documents, it is

In motion seq. no. 013, plaintiffs Bank of India, New York Branch, as a Lender and as Collateral Agent for Allahabad Bank, Hong Kong Branch, and Allahabad Bank, Hong Kong Branch, move pursuant to CPLR 3215 for a default judgment against defendant Anaya Gems, Inc. (Anaya) in the amount of \$49,103,094.33 together with costs, fees, and disbursements of this action.

“On a motion for a default judgment under CPLR 3215 based upon a failure to answer the complaint, a plaintiff demonstrates entitlement to a default judgment against a defendant by submitting: (1) proof of service of the summons and complaint; (2) proof of the facts constituting its claim; and (3) proof of the defendant’s default in answering or appearing.” (*Medina v Sheng Hui Realty LLC*, 2018 N.Y. Misc. LEXIS 1789, *6-7, 2018

WL 2136441, *6-7 [Sup Ct, NY County 2018] [citations omitted].) “Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action. 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] [citations omitted].)

CPLR 3215 (f) requires a plaintiff to submit “proof of the facts constituting the claim, the default and the amount due . . . by affidavit made by the party.” “Where a verified complaint has been served, it may be used as the affidavit of the facts constituting the claim and the amount due; in such case, an affidavit as to the default shall be made by the party’s attorney.” (CPLR 3215 [f].)

Proof of Service

Plaintiffs submit proof that Anaya was served with the summons and complaint by personal service as well as service via the Office of the Secretary of State. (NYSCEF 70 & 71, aff of service.) On January 6, 2023, plaintiffs served Anaya with an amended and supplemental summons and verified amended complaint via the Office of the Secretary of State. (NYSCEF 222, aff of service.) Plaintiffs also complied with the additional service requirements of CPLR 3215 (g)(4)(i). (NYSCEF 286, aff of additional service.)

Proof of Claim

In its verified amended complaint, plaintiffs assert claims for breach of the Bank of India Credit Agreement executed between Bank of India and Anaya (BOI Credit Agreement) and breach of the Allahabad Bank Credit Agreement executed between Allahabad Bank and Anaya (AB Credit Agreement). (NYSCEF 288, Verified Amended Complaint ¶¶ 195-206.)

CPLR 3215 (f) requires a plaintiff to submit “proof of the facts constituting the claim, the default and the amount due ... by affidavit made by the party.” However, “[w]here a verified complaint has been served, it may be used as the affidavit of the facts constituting the claim and the amount due; in such case, an affidavit as to the default shall be made by the party’s attorney.” (CPLR 3215 [f].) Here, plaintiffs submit both the amended complaint verified by Chander Mohan Kumra, Chief Executive of the Bank of India (NYSCEF 288) and the affidavit of Nirmesh Jee, Vice President and Head of Credit for the Bank India (NYSCEF 287, Jee aff ¶ 1.)

Jee states that the Bank of India and Anaya executed the BOI Credit Agreement, a Promissory Note (BOI Note), and Security Agreement. (*Id.* ¶ 3.) Pursuant to the BOI Credit Agreement, the Bank of India agreed to extend \$35 million. (*Id.* ¶ 4.) Allahabad Bank and Anaya executed the AB Credit Agreement, Promissory Note, and Security Agreement. (*Id.* ¶ 7.) Allahabad Bank agreed to extend an additional \$5 million. (*Id.* ¶ 8.) Through both Security Agreements, Anaya assigned continuing liens and a general security interest over Anaya’s accounts receivables, deposit accounts, inventory and equipment, documents of title, fixed assts, shares, rights, and patents, and other property to plaintiffs. (*Id.* ¶¶ 6, 10.) Plaintiffs perfected their interests over Anaya’ collateral. (*Id.* ¶ 11.) In February 2018, Anaya defaulted under both Credit Agreements and failed to cure such default. (*Id.* ¶¶ 14, 16.) In November 2018, this court appointed a receiver over Anaya’s collateral. (*Id.* ¶ 17.) The Receiver recovered \$3,559,170.11 and was relieved of his appointment in May 2023. (*Id.* ¶ 18.) Under the BOI Credit Agreement, the Bank of India is still owed “\$42,827,803.33, which includes accumulated interest in the amount of \$14,927,728.00, plus attorneys' fees and costs.” (*Id.* ¶ 19.) Pursuant to the AB Credit Agreement, Allahabad Bank is still owed

“\$6,275,291.00, which includes unpaid interest in the amount of \$2,115,117.00, plus attorneys' fees and costs.”¹

Jee’s affidavit, the verified amended complaint, and its accompanying exhibits (NYSCEF 188-219) present sufficient proof of facts constituting the claims and the amount due as required by CPLR 3215 (f).

Proof of Default

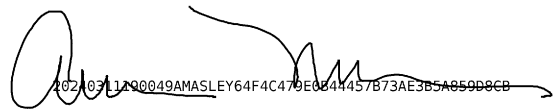
Anaya has not answered plaintiff’s amended summons and complaint or otherwise appeared in the litigation. (NYSCEF 285, Carlo aff ¶ 18.) More than 20 days have passed since plaintiffs served Anaya with the amended summons and complaint and the additional notice as required by CPLR 3215. (*Id.*)

Accordingly, it is

ORDERED that plaintiffs’ motion for a default judgment against Anaya Gems, Inc. is granted; and it is further

ORDERED that plaintiffs are to submit a proposed judgment in MS Word via email and e-file a copy; and it is further

ORDERED that the causes of action against the remaining defendants shall be severed and continued as to those defendants.



3/11/2024
DATE

ANDREA MASLEY, J.S.C.

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

¹ These amounts are as of November 1, 2023. (Carlo aff ¶ 20.)
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