

Hayani v Bid2ride, Inc.

2024 NY Slip Op 32759(U)

August 6, 2024

Supreme Court, New York County

Docket Number: Index No. 161004/2022

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

-----X

SAID HAYANI,

Plaintiff,

- v -

BID2RIDE, INC., BID2RIDE LLC, JAHAN HAKIMI, JACOB
ROBFOGEL,

Defendants.

-----X

INDEX NO. 161004/2022

MOTION DATE 02/28/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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

were read on this motion to/for JUDGMENT - DEFAULT.

Upon the foregoing documents, there being no opposition and good cause having been shown, Plaintiff Said Hayani’s (“Plaintiff”) motion for default judgment against Defendants Bid2ride, Inc., Bid2ride LLC, Jahan Hakimi and Jacob Robfogel (together, “Defendants”) is granted in part and denied in part.

An applicant for default judgment against a defendant must submit: (i) proof of service of the summons and complaint, (ii) proof of the facts constituting the claim, and (iii) proof of the defaulting defendant’s failure to answer or appear (*PV Holding Corp v AB Quality Health Supply Corp*, 189 AD3d 645 [1st Dept 2020]). Affidavits submitted in support of a motion for default judgment only need to allege enough facts to allow a court to assess where a viable cause of action exists (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). In undertaking this review, the Court is mindful that “defaulters are deemed to have admitted all factual allegations in the complaint and all reasonable inferences that flow from them (*Al Fayed v Barak*, 39 AD3d 371, 372 [1st Dept 2007]).

The Court finds that Plaintiff has satisfied proof of service with respect to Defendants Robfogel, Bid2ride LLC and Bid2ride, Inc. (the “Defaulting Defendants”) by filing affidavits of service evidencing service of the Summons and Verified Complaint upon Defendant Robfogel through a person of suitable age and discretion on January 17, 2023, upon Defendant Bid2ride LLC through the Secretary of State on January 30, 2023 and upon Defendant Bid2ride, Inc. on March 4, 2023 through a person authorized to accept service (NYSCEF Doc. 17). Plaintiff has also satisfied his minimal burden of proving the facts constituting his claim by filing an Affidavit of Merit sworn to April 14, 2022 (NYSCEF Doc. 10). Further, Defendants have failed to file answers or otherwise appear in this matter despite their time for doing so having expired. Therefore, entry of default judgment on liability against the Defaulting Defendants and in favor of Plaintiff on Plaintiff’s first through eighth causes of action is appropriate.

With respect to Plaintiff’s ninth cause of action seeking a declaratory judgment, it is well established that “the granting of a declaratory judgment is discretionary with the trial court” and “the discretion must be exercised judicially and with care” (*Long v Long*, 281 AD 254, 256 [1st Dept 1953]). Further, the First Department has held that a “plaintiff may not seek a declaratory judgment when other remedies are available, such as a breach of contract action” (*Singer Asset Fin. Co., LLC v Melvin*, 33 AD3d 355, 358 [1st Dept 2006]). Accordingly, as Plaintiff’s Complaint includes causes of action for, *inter alia*, breach of contract, account stated, quantum meruit, unjust enrichment, promissory estoppel and breach of the implied covenant of good faith and fair dealing (NYSCEF Doc. 9), the Court finds that other remedies are available to Plaintiff which preclude the Court from granting Plaintiff a declaratory judgment in this action. As such, this Court, *sua sponte*, dismisses Plaintiff’s ninth cause of action for declaratory judgment as duplicative (*see Fordham Fin. Mgt., Inc. v Rekor Sys., Inc.*, 2022 NY Misc. LEXIS 10412, 12 [Sup Ct, NY County

2022] dismissing a plaintiff's claim for declaratory judgment, *sua sponte*, as duplicative of the plaintiff's breach of contract claim).

Further, Pursuant to 50 App USC § 521, Plaintiff is required to submit an affidavit of an individual defendant's non-military status on a motion for default judgment. However, with respect to Defendant Jahan Hakimi, Plaintiff's Affidavit of Service (NYSCEF Doc. fails to comply with 50 App USC § 521 concerning defendants' military status (*see generally 363 Assoc. v Sharhan*, 2 Misc 3d 928, 929-30 [Civ Ct NY County 2003])). As such, Plaintiff's motion for default judgment is denied without prejudice as to Defendant Jahan Hakimi, with leave to renew within 60 days of this Decision and Order, upon submission of proper supporting documents.

Accordingly, it is hereby,

ORDERED that Plaintiff Said Hayani's motion for default judgment against Defendants Bid2ride, Inc., Bid2ride LLC and Jacob Robfogel is granted as to liability on Plaintiff's first through eighth causes of action; and it is further

ORDERED that an inquest on damages against Defendants Bid2ride, Inc., Bid2ride LLC and Jacob Robfogel on Plaintiff's first through eighth causes of action is directed at the time of trial; and it is further

ORDERED that a copy of this Decision and Order, with notice of entry, shall be served by counsel for Plaintiff Said Hayani upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is directed, upon the filing of a note of issue and a certificate of readiness and the payment of proper fees, if any, to place this action on the appropriate trial calendar for the inquest hereinabove directed; and it is further

ORDERED that Plaintiff Said Hayani's ninth cause of action for a declaratory judgment is dismissed, *sua sponte*, as duplicative; and it is further

ORDERED that Plaintiff Said Hayani's motion for default judgment against Defendant Jahan Hakimi a/k/a Jahangeer Mirza Hakimi is denied without prejudice, with leave to renew within 60 days upon submission of proper supporting documents; and it is further

ORDERED that within 10 days of entry, counsel for Plaintiff Said Hayani shall serve a copy of this Decision and Order, with notice of entry, on all parties to this action; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

<u>8/6/2024</u> DATE					<u>Mary V Rosado JSC</u> HON. MARY V. ROSADO, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE