

SNCO Cap LLC v Kaufman

2024 NY Slip Op 33816(U)

October 15, 2024

Supreme Court, New York County

Docket Number: Index No. 656578/2022

Judge: Margaret A. Chan

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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. MARGARET A. CHAN PART 49M

Justice

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SNCO CAP LLC,

Plaintiff,

- v -

MICHAEL KAUFMAN, RK DEVELOPMENT PARTNERS
LLC, KIRSTEN CABLE, CABLE HOLDINGS LLC, SERVICE
PEAK SOLUTIONS, LLC, APPRAISAL NATION, LLC

Defendants.

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INDEX NO. 656578/2022

MOTION DATE 12/15/2023

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89 were read on this motion to/for JUDGMENT - DEFAULT

This case arises from a real estate transaction in which plaintiff lender SNCO Cap LLC (SNCO) was allegedly deceived into providing substantial loans based on inflated property appraisals and misrepresentations made by defendants, including Michael Kaufman, his companies RK Development Partners LLC, Cable Holdings LLC d/b/a Kirsten Cable Appraisals (Cable Holdings), Service Peak Solutions LLC (Service Peak), and Appraisal Nation LLC (Appraisal Nation) (together, defendants). Plaintiff moves for default judgment against defendants Cable Holdings and Service Peak (defaulting defendants) because defaulting defendants were served with the summons and complaint yet failed to appear or answer within the required timeframe, thereby defaulting under CPLR 3215. Defaulting defendants oppose this motion.

BACKGROUND

On or about December 5, 2019, SNCO entered into a lending agreement with Saltz Property Management Inc. (Saltz), a shell company controlled by defendant Michael Kaufman, to provide two loans totaling \$1,753,900 (NYSCEF # 57 – Oved Aff ¶¶ 9, 12). The first loan was for \$1,615,000 (Purchase Loan), and the second loan was for \$138,900 (Construction Loan) (*id.* ¶ 9). The loans were secured by a mortgage on property located at 51 Blackwatch Court, Southampton, New York (the property) (*id.* ¶ 10).

Kaufman, who had previously been convicted of wire fraud and served 50 months in prison (*id.* ¶ 24), orchestrated a fraudulent real estate transaction through Saltz, which he set up to conceal his involvement (*id.* ¶¶ 12, 38). To secure substantial loans from SNCO, Kaufman used Tuniesa Simmons Dozier (Simmons), a straw buyer with no real financial stake, as the face of Saltz (*id.* ¶ 38). Kaufman and his co-defendants inflated the loan

amounts by using misleading appraisals prepared by Kirsten Cable of Cable Holdings and rubber-stamped by Appraisal Nation LLC without proper review (*id.* ¶ 11). The appraisal, dated April 16, 2019, valued the property at \$3,505,000 “as-is,” a figure plaintiff asserts was grossly inflated, given that the property was in significant disrepair and occupied by a squatter (*id.* ¶ 31).

Despite these obvious inaccuracies, Appraisal Nation LLC approved the appraisal, which was integral to SNCO’s decision to grant the loans (*id.* ¶ 46). Shortly after the loans were disbursed, Saltz defaulted on its obligations (*id.* ¶ 12), prompting SNCO to initiate foreclosure proceedings in October 2020 (*id.* ¶ 61). The property was sold at a foreclosure auction in November 2021 for \$1,300,000, significantly less than the total loan amount (*id.* ¶ 13). Following the foreclosure sale, SNCO obtained a deficiency judgment in the amount of \$1,195,420.09 to recover the remaining balance owed, as the foreclosure sale price left a substantial shortfall compared to the outstanding loan (*id.* ¶ 14).

Additionally, Service Peak Solutions LLC acted as a broker in the transaction, facilitating the deal though it was not directly involved in the appraisals themselves (*id.* ¶ 29). Through these coordinated actions, the defendants executed a fraudulent scheme that resulted in significant financial harm to SNCO.

Service of Process

Initially, SNCO attempted to serve the Summons and Complaint on defaulting defendants through traditional methods (NYSCEF # 66 – Malatak Aff ¶ 7). These efforts were unsuccessful, as Kirsten Cable, the owner of Cable Holdings, had recently moved, and the defaulting defendants were unauthorized foreign corporations (*id.*). As a result, on November 7, 2022, the court granted plaintiff’s motion for alternate service via email (*id.* ¶ 9; NYSCEF #82 – Alternate Service Order). On November 17, 2022, SNCO served the defendants via email and filed an affirmation of service the same day (Malatak Aff ¶ 10; NYSCEF #37). SNCO’s email read in its entirety: “[p]lease see the attached documents for service on yourself, Cable Holdings LLC d/b/a Kirsten Cable Appraisals and Service Peak Solutions, LLC in the above-referenced matter” (NYSCEF # 88 – Exh D).

Despite the proper service, Cable Holdings and Service Peak failed to respond within the 30-day timeframe set forth under CPLR 320, with the extended deadline expiring on December 19, 2022 (December 17, 2022 fell on a Saturday) (Malatak Aff ¶ 11). Subsequently, on February 9, 2023, SNCO moved for default judgment under CPLR 3215, asserting that the defaulting defendants’ failure to respond entitled it to judgment as a matter of law (Malatak Aff ¶ 15). Kirsten Cable eventually appeared in the case on June 5, 2023, approximately seven months late. But Kirsten Cable did not appear on behalf of corporate entities, and the defaulting defendants still did not respond to the complaint (Malatak Aff ¶¶ 12, 13; NYSCEF # 80 – Cable Aff ¶ 3). However, on January 4, 2024, the attorney for the defaulting defendants, Cable Holdings and Service Peak, filed their notice of appearance on January 4, 2024, to oppose plaintiff’s motion for a default judgment (NYSCEF # 73).

In response, the defaulting defendants argue that their default should be excused due to unclear service and claim they had reasonable excuses for failing to respond

(NYSCEF # 79 – Harris Aff ¶ 16). Kirsten Cable submits an affidavit in support of the defaulting defendants' opposition contending that SNCO served the Summons and Complaint to a personal email address, rather than using the email addresses associated with Cable Holdings and Service Peak (the affiliated companies). As a result, Cable claims it was unclear whether the service was meant to be personal or for the affiliated companies (Cable Aff ¶¶ 12–16). They argue that this confusion about the service constitutes a valid reason for their failure to respond.

Additionally, the defaulting defendants claim they have meritorious defenses, arguing that they, the affiliated companies, were not involved in the fraudulent appraisals at the center of SNCO's case (Harris Aff ¶¶ 19–28). They maintain that there is no documentation linking these entities to the alleged scheme and that the appraisals in question only bear Kirsten Cable's name, not those of the companies (Harris Aff ¶¶ 22-25).

Defendants also assert that SNCO has failed to meet its burden of proof, providing conclusory allegations without factual support to connect Cable Holdings LLC or Service Peak Solutions LLC to the fraudulent appraisals (Harris Aff ¶¶ 25; Cable Aff ¶¶ 6-7, 13, 15-16). They request the opportunity to file a late answer and contest the claims through further proceedings.

In reply, SNCO argues that the defendants have not provided a reasonable excuse for their default, nor have they presented a meritorious defense. Plaintiff points out that Kirsten Cable admitted receiving the service email on November 17, 2022, which was clearly addressed to Kirsten Cable personally as well as the corporate entities, Cable Holdings and Service Peak (NYSCEF # 88 – Malatak Reply Aff, Exh D). Despite this, Cable only filed an answer on his own behalf and allowed his corporate entities to remain unresponsive for over seven months (NYSCEF # 89 – Reply MOL at 5). Plaintiff asserts that this was a deliberate choice, not a misunderstanding, and cannot be considered a valid excuse for default (Reply MOL at 6).

Plaintiff further contends that the defendants' claims that Cable Holdings and Service Peak were not involved in the fraudulent appraisals are unsupported by evidence (Reply MOL at 1–2). Defendants' defenses are conclusory and fail to address key facts, including Service Peak's role as a broker in the transaction. Moreover, by defaulting, the defendants have effectively admitted the allegations in the complaint (Reply MOL at 7–8).

Finally, SNCO notes that Cable's personal response does not affect the motion for default judgment, which is directed at his corporate entities, not at Kirsten Cable individually (Reply MOL at 8-9). Therefore, SNCO requests that the court grant its motion for default judgment, as the defendants' opposition fails to meet the legal standard to vacate the default.

DISCUSSION

Pursuant to CPLR 3215(a), “[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. Plaintiff has shown that it properly served defendants Kirsten Cable, Cable

Holdings and Service Peak via email, pursuant to CPLR 305(8) and 311-a(b) as permitted by this court's order dated November 7, 2022 (NYSCEF # 34). Only defendant Kirsten Cable has filed an Answer and Amended Answer but he did not appear for his affiliated companies.

In any event, to vacate a default judgment, defendants must show that their default was excusable and that they have a meritorious defense to the action (*see Martinez v Urban Renaissance Collaboration Limited Partnership*, 217 AD3d 475, 476 [1st Dept 2024]; *see also Estrella v Herrera*, 23 AD3d 320, 321 [1st Dept 2005] [sustaining lower court's default judgment because defendant failed "to show a reasonable excuse for delay"]). "[I]n determining [a motion to vacate a default judgment] and exercising its discretion, the court is obligated to give a balanced consideration to these factors and also to the extent of the delay, the prejudice to the non-defaulting party, and the evidence of intent or lack of intent deliberately to default or abandon the action" (*Arred Enterprises Corp. v Indemnity Ins. Co. of North America*, 108 AD2d 624, 626 [1st Dept 1985]).

Cable and the defaulting defendants have offered an excuse for their default, but it is not reasonable. Cable claims confusion as to whether the service was personal or for his affiliated companies. However, SNCO's November 17, 2022 email, sent in compliance with the court's Alternative Service Order, clearly named Cable Holdings and Service Peak as the entities served.

This alleged confusion fails to justify Cable's seven-month delay in filing an answer or the defendants' one-year delay in appearing. Even if there had been initial uncertainty about whether the service applied to the corporate entities or to Cable personally—which is implausible given the explicit identification of the defendants—it does not explain why the defaulting defendants took no action for a full year. Cable could have easily clarified any misunderstanding with a simple inquiry, yet no effort was made to resolve any supposed confusion over the clearly worded notice. This extended delay reflects a lack of reasonable diligence in addressing the lawsuit.

The defaulting defendants also claim they have a meritorious defense, asserting that Cable Holdings and Service Peak were not involved in the fraudulent appraisals. However, the exhibit provided by SNCO clearly shows that the appraisal was conducted by "Kirsten Cable Appraisals." Cable contends, however, that "Kirsten Cable Appraisals" is not a d/b/a for Cable Holdings (Cable Aff ¶ 9) but offers no evidence to substantiate this claim, relying only on blanket denials. Similarly, Cable denies Service Peak's involvement in the appraisals, despite SNCO's initial assertion that Service Peak acted as a broker only and not as an appraiser. These arguments are conclusory and lack any supporting documentation or factual evidence. Further, the defaulting defendants' year-long delay has caused prejudice to SNCO by impeding its ability to advance the case.

As plaintiff has shown that the defaulting defendants have failed to timely appear despite the proper service, and in the absence of a reasonable excuse for the default or a showing of a meritorious defense, plaintiff's motion for default judgment is granted.

CONCLUSION

For the foregoing reasons, it is hereby

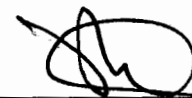
ORDERED that plaintiff SNCO's motion for default judgment as to defendants Cable Holdings d/b/a Kirsten Cable Appraisals and Service Peak Solutions, LLC is granted; it is further

ORDERED that plaintiff's counsel shall serve a copy of the Decision and Order, along with notice of entry, on defendants within 10 days of this filing; it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of plaintiff SNCO Cap LLC and against defendants Cable Holdings d/b/a Kirsten Cable Appraisals, and Service Peak Solutions, LLC.

10/15/24

DATE



MARGARET A. CHAN, 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