

Santander Consumer USA, Inc. v Godoy

2024 NY Slip Op 34891(U)

September 18, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 606773/2024

Judge: Maureen T. Liccione

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

Short Form Order

Index No. 606773/2024

SUPREME COURT – STATE OF NEW YORK
PART 78 – SUFFOLK COUNTY

P R E S E N T:

Hon. Maureen T. Liccione

Justice Supreme Court

-----x
SANTANDER CONSUMER USA, INC., d/b/a
CHRYSLER CAPITAL,

Plaintiff,

-against-

GILMA GODOY,

Defendant.
-----x

Mot. Seq. No. 001 – MD
Orig. Return Date: 05/30/2024
Mot. Submit Date: 06/05/2024

PLAINTIFF’S ATTORNEY

LAW OFFICE OF
DAVID B. CETRON, PC
49 W. 37th Street, 7th Fl
New York, NY 10018

DEFENDANT’S ATTORNEY

ANADEL CANALE, PC
1805 5th Avenue, Suite 1
Bay Shore, NY 11706

Upon the e-filed documents numbered 1 through 16 and due deliberation, it is determined as follows:

ORDERED that plaintiff’s motion for default judgment against defendant is denied.

This action was commenced by the filing of a Summons and Verified Complaint for breach of contract and replevin on March 15, 2024. The complaint alleges that plaintiff failed to make monthly payments as required by the retail instalment contract executed by plaintiff on September 25, 2021 for the purchase of a 2018 Jeep Wrangler (Retail Instalment Contract). The Summons and Verified Complaint with exhibits was served on defendant pursuant to CPLR 308 (2) on March 19, 2024. The Affidavit of Service was filed on March 22, 2024. On May 9, 2024, additional service of the summons was made by first class mail pursuant to CPLR 3215 (g) (3) (i) and (ii). Defendant’s time to answer expired on May 1, 2024 (CPLR 3012 [c]).

On May 9, 2024, pursuant to CPLR 3215, plaintiff moved for default judgment awarding plaintiff possession of the specific chattel identified in the Verified Complaint and directing delivery of the chattel to plaintiff pursuant to the Retail Instalment Contract, UCC § 9-609 (c) and

Santander Consumer USA, Inc v Godoy

Index No. 606773/2024

CPLR 7109 (b), and authorizing enforcement and recovery under CPLR 5102 and 7110. Defendant did not file an opposition to the motion, but filed on May 20, 2024, his answer. On June 3, 2024, plaintiff filed a notice of rejection rejecting defendant's answer as untimely.

“To extend the time to answer the complaint and to compel the plaintiff to accept an untimely answer as timely, a defendant must provide a reasonable excuse for the delay and demonstrate a potentially meritorious defense to the action” (*Wilmington Tr., Natl. Assn. v Ashe*, 189 AD3d 1130, 1131 [2d Dept 2020]; *Mannino Dev., Inc. v Linares*, 117 AD3d 995, 995 [2d Dept 2014]; *see* CPLR 3012 [d]). “Whether there is a reasonable excuse for a default is a discretionary, sui generis determination to be made by the court based on all relevant factors, including the extent of the delay, whether there has been prejudice to the opposing party, whether there has been willfulness, and the strong public policy in favor of resolving cases on the merits” (*Kim v Strippoli*, 144 AD3d 982, 983 [2d Dept 2016]; *Harcztark v Drive Variety, Inc.*, 21 AD3d 876 [2d Dept 2005]).

Here, although defendant filed his answer only twenty (20) days late, defendant did not oppose the motion for default judgement and as such did not provide a reasonable excuse for the delay and did not demonstrate a potentially meritorious defense to the action. Furthermore, defendant has not cross moved pursuant to CPLR 3012 [d] to extend the time to answer or to compel the acceptance of the answer that was untimely served. As such, defendant's answer was untimely and the Court will consider plaintiff's motion for default judgment against defendant.

According to CPLR 3215 (a), “[w]hen a defendant has failed to appear, plead or proceed to trial on 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.” On a motion for leave to enter judgment against a defendant for failure to answer or appear, a plaintiff must submit proof of service of the summons and complaint upon the defaulting defendant, proof of the facts constituting plaintiff's claim, and proof of the defendant's default (*Gray v Doyle*, 170 AD3d 969, 970 [2d Dept 2019]; CPLR 3215 [f]; *Triangle Properties 2, LLC v Narang*, 73 AD3d 1030, 1032 [2d Dept 2010]). As to the second requirement, proof of the claim itself, a plaintiff must allege enough facts to enable the court to determine that a viable cause of action exists (*Roy v 81E98th KH Gym, LLC*, 142 AD3d 985, 985 [2d Dept 2016]; *Triangle Properties 2*, 73 AD3d at 1032). Proof that the plaintiff has submitted enough facts may be established by an affidavit of a party or someone with knowledge or by a complaint verified by the plaintiff that sufficiently details the

Santander Consumer USA, Inc v Godoy

Index No. 606773/2024

facts and the basis for the defendant's liability (*see Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]; *Gray*, 170 AD3d at 971; *Michael v Atlas Restoration Corp.*, 159 AD3d 980, 982 [2d Dept 2018]; *Jacobsen v S & F Serv. Ctr. Co.*, 131 AD3d 450, 451 [2d Dept 2015]).

Here, plaintiff provided proof of service of the Summons and Complaint upon defendant pursuant to CPLR 308 (2) and compliance with the additional service requirements of CPLR 3215 (g) (3) (i) and (ii). Defendant's time to answer or move with respect to the Summons and Complaint expired on May 1, 2024 and defendant's answer dated May 20, 2024 was untimely as discussed above.

However, plaintiff failed to allege enough facts to enable this Court to determine that a viable cause of action exists. Plaintiff Santander Consumer USA, Inc., d/b/a Chrysler Capital alleges that defendant breached the terms of the Retail Instalment Contract by failing to make monthly payments to plaintiff, but the Retail Instalment Contract lists Security Dodge Chrysler Jeep Ram as the "seller-creditor" and is executed by Security Dodge Chrysler Jeep Ram, as the seller, not plaintiff (NYSCEF Doc No. 9). The Court is left to surmise that an assignment of the Retail Instalment Contract might have occurred from Security Dodge Chrysler Jeep Ram to plaintiff, but plaintiff did not provide an affidavit and did not submit any evidence about the assignment of Retail Instalment Contract. In fact, the complaint which was only verified by plaintiff's attorney does not allege that the Retail Instalment Contract was assigned by Security Dodge Chrysler Jeep Ram to plaintiff and does not provide any indication of the relationship between the two entities. What the complaint does is allege that plaintiff has a security interest in the jeep and includes a "Title or Lien Status Report" listing plaintiff as the lienholder (NYSCEF Doc No. 3). Furthermore, the verification affidavit of Felicia Jaimes, Assistant Vice President, Legal Servicing, Replevins with Santander Consumer USA, Inc., d/b/a Chrysler Capital, also provides no statements as to plaintiff's standing to bring this action, but for a general statement that the contents of the Verified Complaint "are true to [her] knowledge except as to those matters stated to be alleged upon information and belief, and as to those matters, [she] believes them to be true" (NYSCEF Doc No. 9).

Accordingly, plaintiff's motion is denied.

Santander Consumer USA, Inc v Godoy

Index No. 606773/2024

The foregoing constitutes the decision and Order of the Court.

ENTER

DATE: September 18, 2024
Riverhead, NY


HON. MAUREEN T. LICCIONE, J.S.C.

FINAL DISPOSITION

NON-FINAL DISPOSITION