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| <b>Kapitus Servicing, Inc. v Bosco</b>                                                                                                                                                                                         |
| 2024 NY Slip Op 35295(U)                                                                                                                                                                                                       |
| September 3, 2024                                                                                                                                                                                                              |
| Supreme Court, Nassau County                                                                                                                                                                                                   |
| Docket Number: Index No. 603537/23                                                                                                                                                                                             |
| Judge: Randy Sue Marber                                                                                                                                                                                                        |
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| This opinion is uncorrected and not selected for official publication.                                                                                                                                                         |



the sum of \$8,500.00, to be paid to the Plaintiff from twenty five percent (25%) of Palazzo's future receivables. Pursuant to the December 5, 2016 Agreement, the Plaintiff agreed to purchase \$10,240.00 of Palazzo's future receivables for the sum of \$8,000.00, to be paid to the Plaintiff from twenty six percent (26%) of Palazzo's future receivables (*See* Plaintiff's Affirmation of Merit, NYSCEF Doc. No. "6"). The Plaintiff asserts that the Defendant, BOSCO, executed a personal guarantee of performance of all the covenants and obligations made by Palazzo under the Agreements (*See* Plaintiff's Affirmation, NYSCEF Doc. No. "6" at ¶ 17). The Plaintiff alleges that Palazzo and BOSCO initially made payments totaling the sum of \$7,171.09, but thereafter stopped payments on or about March 13, 2017, thereby breaching the Agreements and leaving a balance of \$14,798.91 (*Id.* at ¶¶ 11 and 21).

Pursuant to the Agreements, the Plaintiff alleges that BOSCO failed to fulfill his obligation as guarantor, thereby breaching the personal guarantee, and owes the Plaintiff the balance of the purchased amount, \$14,798.91, together with a default fee of \$2,500.00 and a processor change fee of \$5,000.00, for each of the Agreements, totaling the sum of \$29,798.91.

Pursuant to CPLR § 3215, a plaintiff may move for a default judgment against a defendant who fails to answer or otherwise appear in the action within one year of the default. Pursuant to CPLR § 3215 (f), the movant must provide: (i) proof of service of the summons and complaint; (ii) an affidavit by the party setting forth the facts constituting the claim; (iii) proof of the default and/or amount due.

The Plaintiff commenced this action by the filing of a Summons and Complaint on or about March 1, 2023 (*See* Summons and Complaint, annexed to Motion as Exhibit “D”). A copy of the Summons and Complaint was duly served upon the Defendant, BOSCO, personally, on March 7, 2023 (*See* Affidavit of Service, annexed to Motion as Exhibit “E”). The Plaintiff also submitted proof of compliance with the additional mailing requirements of CPLR § 3215 (g)(3)(i), as well as CPLR § 3215 (g)(3)(ii). The Plaintiff submits a sworn affirmation from an authorized representative of the Plaintiff, David Wolfson, Vice President of Risk Management and Asset Recovery, which appropriately serves as sufficient proof of the facts constituting the claim pursuant to CPLR § 3215(f).

It appears from a review of the documentation presented that all necessary parties have been duly served with notice of this application and more than thirty (30) days has elapsed since completion of service. Thus, the Defendant is in default for failing to answer or otherwise appear in this action.

Accordingly, it is hereby

**ORDERED**, that the unopposed motion by the Plaintiff, KAPITUS SERVICING, INC. f/k/a COLONIAL FUNDING NETWORK, INC. as servicer and agent for STRATEGIC NATIONWIDE FUNDING, seeking an Order pursuant to CPLR § 3215, granting a default judgment in its favor as against the Defendant, JAMES BOSCO (a/k/a JAMES M. BOSCO JR), for the sum of \$29,798.91, with statutory interest from March 13, 2017, plus the statutory costs and disbursements of this action, is **GRANTED**; and it is further

**ORDERED**, that the Plaintiff's counsel shall serve a copy of this Order upon the Defendant, JAMES BOSCO (a/k/a JAMES M. BOSCO JR), at his last known address by certified mail, return receipt requested, **AND** by regular mail, within twenty (20) days of the date of entry of this Order. **PROOF OF SERVICE MUST BE FILED WITH THE COURT.**

This constitutes the decision and Order of this Court.

DATED: Mineola, New York  
September 3, 2024

  
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Hon. Randy Sue Marber, J.S.C.

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**ENTERED****Sep 04 2024**NASSAU COUNTY  
COUNTY CLERK'S OFFICE