

Fox Capital Group, Inc. v Statewide Logistics LLC
2024 NY Slip Op 35695(U)
April 3, 2024
Supreme Court, Nassau County
Docket Number: Index No. 601662/22
Judge: Randy Sue Marber
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAUPresent: HON. RANDY SUE MARBER
JUSTICE

TRIAL/IAS PART 2

FOX CAPITAL GROUP, INC.,

X

Plaintiff,

Index No.: 601662/22

Motion Sequence...03

Motion Date...12/20/23

-against-

XXX

STATEWIDE LOGISTICS LLC,

Defendant.

X

Papers Submitted:

Notice of Motion.....X

Upon the foregoing papers, the unopposed motion by the Plaintiff, FOX CAPITAL GROUP, INC., seeking an Order pursuant to CPLR § 3215, granting it a default judgment in its favor as against the Defendant, STATEWIDE LOGISTICS LLC, is determined as hereinafter provided.

In this breach of contract action, the Plaintiff alleges that on or about December 6, 2021, the parties entered into a Future Receivables Sale and Purchase Agreement ("Agreement") whereby the Plaintiff agreed to purchase \$142,405.00 of the Company Defendant's future receivables for the sum of \$95,000.00, to be remitted to the Plaintiff from fifteen percent (15%) of the Company Defendant's future receivables (*See* Agreement, annexed to Motion as Exhibit "A"). Pursuant to the Agreement, the Defendant authorized the Plaintiff to make ACH withdrawals from the Defendant's bank account until the balance was fully paid to the Plaintiff. The Plaintiff alleges that the Company Defendant

initially made payments totaling the sum of \$23,454.90, but thereafter stopped payments on or about December 30, 2021, thereby breaching the Agreement. As a result, the Plaintiff alleges that the Company Defendant owes the Plaintiff \$118,950.10 of the purchased amount, together with an additional default fee of \$5,000.00, for a total of \$123,950.10 (*See* Summons and Verified Complaint, annexed to Motion as Exhibit “E”).

The Plaintiff commenced this action by the filing of a Summons and Complaint on or about February 9, 2022 (*Id.*).¹ Thereafter, the Plaintiff asserts that, on or about June 2, 2022, the parties entered into a Settlement Agreement wherein the parties agreed there was a balance of \$148,687.62 (*See* Plaintiff’s Affidavit, NYSCEF Doc. No. 41; *also see* Settlement Agreement, annexed to Motion as Exhibit “D”). Pursuant to the Settlement Agreement, the Plaintiff alleges that the Defendants initially made payments totaling the sum of \$6,000.00, but thereafter stopped payments thereby breaching the Agreement and leaving a balance of \$142,687.62 (*See* Plaintiff’s Affidavit, NYSCEF Doc. No. 41).

Pursuant to the terms of the settlement, the Defendants were to pay the Plaintiff a total sum of \$148,687.62, payable as follows²:

Date of Payment	Method of Payment	Payment Amount
On or before Thursday June 2 nd 2022- Thursday November 2 nd , 2023	ACH OR WIRE	\$2,000.00
On or before Thursday November 9 th 2023	ACH OR WIRE	\$687.62

¹ Initially this matter was sought against STATEWIDE LOGISTICS LLC and VERONICA GIL-ORTEGA, however, pursuant to the Court Order dated October 25, 2023, and entered October 27, 2023, this matter was discontinued as against VERONICA GIL-ORTEGA in light of a discharge in bankruptcy (*See* Order-Amending Caption, NYSCEF Doc. No. 39).

² While the Settlement Agreement asserts the Settlement Payment as \$148,687.62, said Agreement does not assert a set schedule, weekly or monthly, upon which the “Payment Amount”, was to be made.

Pursuant to the Settlement Agreement, Defendants agreed that they had three (3) days to cure any missed payments (*See* Settlement Agreement, annexed to Motion as Exhibit “D” at ¶ 4). If the Defendants did not cure the default, then Plaintiff, without any notice, could enforce its rights under the Agreement, including, “the immediate right to apply for entry of a default judgment against the Defendants pursuant to CPLR 3215(i)” (*Id.* at ¶¶ 4-5).

Pursuant to CPLR § 3215, a plaintiff may move for a default judgment against a defendant for failing to comply with a stipulation of settlement. Pursuant to CPLR § 3215(i):

“Where, after commencement of an action, a stipulation of settlement is made, providing, in the event of failure to comply with the stipulation, for entry without further notice of a judgment in a specified amount with interest, if any, from a date certain, the clerk shall enter judgment on the stipulation and an affidavit as to the failure to comply with the terms thereof, together with a complaint or a concise statement of the facts on which the claim was based...”

Here, a settlement was reached after the commencement of the action between the parties. The terms of the settlement include a default provision that in the event the Defendants fail to comply with its terms, a judgment may be entered without notice to the other party. Furthermore, the settlement terms set forth a specific amount due which included the sum of \$148,687.62³. The Plaintiff submits an affidavit setting forth the default and asserting that the Defendant initially made payments totaling the sum of \$6,000.00, leaving a balance of \$142,687.62 (*See* Plaintiff’s Affidavit, NYSCEF Doc. No. 41).

³ In this instant application, the Plaintiff seeks “interests from December 30, 2021, excepting the dates that Defendants were in bankruptcy”, however, said interest is not provided for in the Settlement Agreement, and as such, that portion is denied.

It appears from a review of the documentation presented that that the relief requested is appropriate. Thus, the Defendant is in default for failing to comply with the Stipulation of Settlement.

Accordingly, it is hereby

ORDERED, that the unopposed motion by the Plaintiff, FOX CAPITAL GROUP, INC. STATEWIDE LOGISTICS LLC, granting a default judgment in its favor as against the Defendant, STATEWIDE LOGISTICS LLC, for the sum of \$142,687.62, with statutory interest from November 6, 2023, the date this application was filed, and the statutory costs and disbursements of this action, is **GRANTED**; and it is further

ORDERED, that counsel for the Plaintiff shall serve a copy of this Order upon the Defendant at its 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
April 3, 2024


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

ENTERED

Apr 11 2024

NASSAU COUNTY
COUNTY CLERK'S OFFICE