

Stuart v Star Jets Intl., Inc.

2025 NY Slip Op 33187(U)

August 20, 2025

Supreme Court, New York County

Docket Number: Index No. 656737/2019

Judge: Emily Morales-Minerva

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.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. EMILY MORALES-MINERVA PART 42M

Justice

-----X

INDEX NO. 656737/2019

SUSAN STUART, as the Administrator of the Estate of
BRETT STUART

MOTION DATE 01/03/2025

Plaintiff,

MOTION SEQ. NO. 012

- v -

STAR JETS INTERNATIONAL, INC., RICKY SITOMER,

DECISION + ORDER ON
MOTION

Defendant(s).

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 012) 220, 221, 222, 223
were read on this motion to/for JUDGMENT - DEFAULT

APPEARANCES:

Meister Seelig & Fein PLLC (Kevin A Fritz, Esq.), for the
Plaintiff.

HON. EMILY MORALES-MINERVA, J.S.C.

Plaintiff SUSAN STUART, as Administrator of the Estate of
Brett Stuart, moves, by notice of motion (seq. no. 012), for an
order granting her default judgment against defendant STAR JETS
INTERNATIONAL, INC.¹ pursuant to CPLR §§ 321(a) and/or 3215,
seeking recovery of \$109,000.00 allegedly deposited by the Brett
Stuart, now deceased, under a prepaid air charter credit

¹ SUSAN STUART has filed a motion for default judgment against STAR JETS
INTERNATIONAL, INC. on grounds that it has failed to retain new counsel after
its prior counsel was relieved. RICKY SITOMER, who is STAR JETS INTERNATIONAL
INC.'s Chief Executive Officer, Director, Treasurer and Secretary was not
included in this motion (see NYSCEF Doc. No. 220, notice of motion sequence
No. 12; see also NYSCEF Doc. No. 1, Verified Complaint).

arrangement along with a 9% statutory interest from October 04, 2019.

This motion arises from STAR JETS INTERNATIONAL, INC.'s failure to retain substitute counsel following this Court's order dated May 22, 2024, which granted its prior counsel's motion (seq. no. 009) to be relieved and directed defendants to inform the Court within 30 days as to whether they had retained new counsel (see New York State Courts Electronic Filing System [NYSCEF] Doc. No. 200, Order and Decision, dated May 22, 2024). For the reasons set forth below, the motion is granted.

BACKGROUND

Defendant RICKY SITOMER (Sitomer) is the founder of STAR JETS INTERNATIONAL, INC. (Star Jets), a New York-based private jet brokerage. Prior to establishing Star Jets, Sitomer owned and controlled a similar entity known as Blue Star Jets, LLC (Blue Star).

Blue Star operated a "SkyCard" program that allowed clients to prepay for charter flights by purchasing credits--\$1 per credit--which were deducted as flights were booked (see NYSCEF Doc. No. 01, Summons and Complaint, ¶¶ 8-11; see also NYSCEF Doc. No. 221, Affirmation of Kevin Fritz in Support of Motion for Default Judgment, ¶ 6). Between 2007 and 2013, Brett Stuart,

deposited approximately \$1.45 million into his SkyCard Program Account. The governing agreement required Blue Star to hold these funds in a segregated account (see NYSCEF Doc No. 221, Affirmation of Kevin Fritz in Support of Motion for Default Judgment ¶ 6; see also NYSCEF Doc No. 160, SkyCard Program Agreement § 1 [f]). After selling Blue Star Jets and forming Star Jets, Sitomer informed Brett Stuart that \$109,000.00 of his funds remained "on account" (see NYSCEF Doc No. 221, Affirmation of Kevin Fritz in Support of Motion for Default Judgment ¶ 7; see also NYSCEF Doc No. 163, email on p. 2).

On October 4, 2019, Brett Stuart through counsel, demanded return of said funds; however, defendants allegedly refused the demand (see Doc No. 221, Affirmation of Kevin Fritz in Support of Motion for Default Judgment, ¶ 8). Therefore, Brett Stuart initiated this action asserting four causes of action: (1) breach of contract against Star Jets; (2) conversion against both defendants; (3) unjust enrichment against Sitomer individually; and (4) alter ego liability against Sitomer for operating Blue Star and Star Jets as a single enterprise (see NYSCEF Doc No. 1, Verified Complaint ¶¶ 19-43).

Brett Stuart first moved (mot. seq. no. 001) for a default judgment against both defendants, Star Jets and Sitomer, pursuant to CPLR § 3215 (see NYSCEF Doc. No. 09, Notice of Motion). The court (Bannon, J.S.C.) denied the motion without

prejudice on grounds that plaintiff failed to submit sufficient proof of the facts constituting its claim (see NYSCEF Doc. No. 17, Decision and order on motion).

After curing the aforementioned defects, Brett Stuart moved again for a default judgment (mot. seq. no. 002) against defendants (see NYSCEF Doc. No. 18, notice of motion). Upon review, the court (Bannon, J.S.C.) granted Brett Stuart's motion granting a default judgment against Star Jets and Sitomer (see NYSCEF Doc. No. 33, Decision and Order on motion).

Thereafter, Star Jets and Sitomer filed an Order to Show Cause (mot. seq. no. 003) pursuant to CPLR §§ 317 and 5015, seeking to vacate the default judgment. Defendants asserted that plaintiffs never personally served him or Star Jets with the Summons and Complaint (see NYSCEF Doc. No. 38, Affidavit of Ricky Sitomer in support of motion to vacate default).

By decision and order, dated November 03, 2020, the court (Bannon, J.S.C.) granted the defendants' motion to vacate the default judgment (see NYSCEF Doc. No. 70, Decision and Order on mot. seq. no. 003 dated November 03, 2020).

Defendants, Star Jets and Sitomer, then filed a Third-Party Summons and Complaint against APOLLO JETS, LLC, FLY PRIVATE ENTERPRISES, INC. (Third-Party Defendant Apollo), and TODD ROME (Third-Party Defendant Rome) (see NYSCEF Doc. 75, Third Party Summons). In support, defendants cite their answer to the

complaint, in which they allege that Third-Party Defendant Rome, a former officer of Blue Star Jets, caused Third-Party Defendant Apollo to acquire Blue Star Jets' sales personnel and customer base, and that Third-Party Defendant Apollo had assumed the obligation to honor Blue Star's SkyCard accounts (see NYSCEF Doc 77, Answer ¶ 13).

Subsequently, Third-Party Defendant Apollo moved to dismiss defendants' third-party complaint (see NYSCEF Doc. No. 80, notice of mot. seq. no. 004). Third-Party Defendant Apollo stated that defendants failed to state a cause of action (see NYSCEF Doc. No. 81, Third-Party Defendant Apollo Jets, LLC's Memorandum of Law in Support of Motion to Dismiss). Third-Party Defendant Rome moved separately (mot. seq. no. 005), seeking dismissal of the third-party complaint (see NYSCEF Doc. No. 95, Notice of mot. seq. no. 005). He filed a stipulation of discontinuance signed between defendants Star Jets, Sitomer and Third-Party Defendant Rome (see NYSCEF Doc. No. 101, Stipulation of Discontinuance as to Fly Private Enterprises, Inc and Todd Rome only).

By decision and order dated May 21, 2021, the court (Bannon, J.S.C.) granted the motion to dismiss the third-party complaint in its entirety (see NYSCEF Doc. No. 103, Decision and Order on mot. seq. no. 005, dated May 21, 2021).

By decision and order dated August 12, 2021, the court (N.

Bannon, J.S.C.), dismissed the third-party complaint in its entirety and further ordered the third-party complaint filed under a separate index number (595123/2021²) as discontinued, dismissed in entirety, and marked as disposed (see NYSCEF Doc. No. 107, Decision and Order on Motion [seq. no. 004]).

Defendants, Star Jets and Sitomer filed motion sequence number 006, pursuant to CPLR § 2221(d), seeking leave to reargue order dated August 12, 2021 which dismissed the third-party complaint (see NYSCEF Doc. No. 112, Notice of Motion to Reargue, mot. seq. no. 006). In the meantime, Brett Stuart filed a motion for summary judgment against defendants Star Jets and Sitomer (see NYSCEF Doc. 147, Notice of Motion for Summary Judgment, mot. seq. no. 007).

The court (N. Bannon, J.S.C.), denied the defendants' motion to reargue (see NYSCEF Doc. No. 168, Decision and Order on mot. seq. no. 006, dated January 24, 2022). Further, the court (N. Bannon, J.S.C.) denied plaintiff Brett Stuart's motion for summary judgment in its entirety as the plaintiff failed to make prima facie showing of entitlement to judgment as a matter of law (see NYSCEF Doc. No. 188, Decision and Order on mot. seq. no. 007).

² A search conducted on NYSCEF revealed no case found under Index No. 595123/2021.

Thereafter, defendants' counsel, Jaffe & Asher LLP, moved to withdraw (see NYSCEF Doc. No. 196, Notice to motion, seq. no. 009), which was granted by order dated May 22, 2024, with notice of entry served on May 24, 2024 (see NYSCEF Doc No. 200, Decision and Order on motion seq. no. 009; see also NYSCEF Doc. No. 201, Notice of Entry). The Court directed Star Jets to retain substitute counsel within a 30-day period. This order was issued by the court on May 22, 2024. The last day for Star Jets to retain a new counsel was June 21, 2024. To date, no counsel has appeared on behalf of defendants.

Following Brett Stuart's passing, plaintiff moved, by Order to Show Cause (mot. seq. no. 010), for a default judgment against Star Jets. In a separate motion (motion seq. no. 011), plaintiff moved to substitute herself as plaintiff on behalf of the deceased plaintiff's estate (see NYSCEF Doc. No. 210, Notice of motion, seq. no. 011).

On April 24, 2024, by combined Decision and Order, the Court denied the motion for default judgment without prejudice, finding the case procedurally premature considering the pending motion seeking substitution of party plaintiff (see NYSCEF Doc. 215, Decision and Order on motion seq. no. 010). The same decision granted Susan Stuart's substitution application and amended the caption to reflect the same (see NYSCEF Doc. 216, Decision and Order on mot. seq. no. 011).

Now, the estate moves for a default judgment for the fourth time pursuant to CPLR § 321(a) and/or CPLR § 3215 for an order granting it a default judgment against defendant STAR JETS only. The Estate argues a default lies as Star Jets has failed to retain substitute counsel within the prescribed window. The Estate seeks judgment in the amount of \$109,000 plus 9% statutory interest from October 04, 2019 (see NYSCEF Doc No. 221, Affirmation of Kevin Fritz in Support of Motion for Default Judgment).

ANALYSIS

Under CPLR § 3215(a), a plaintiff may seek a default judgment where a defendant fails to appear, plead, or proceed to trial. To obtain such relief, the plaintiff must submit proof of service of the summons and complaint, an affidavit of the facts constituting the claim, proof of the default, and evidence of damages (see CPLR § 3215[a]).

Pursuant to CPLR § 321(a), a corporation must appear by attorney in any civil action and may not proceed pro se except under narrow statutory exceptions not applicable here.³ The

³ CPLR § 321(a) generally mandates that corporations appear by attorney in civil actions. However, this requirement is subject to narrow statutory exceptions. Specifically, municipal corporations, public benefit corporations, school districts, or school district public libraries located

statute explicitly provides that "a corporation or voluntary association shall appear by attorney," thereby underscoring the procedural mandate that corporate entities are not permitted to prosecute or defend actions without legal representation. A corporation's failure to retain counsel, particularly following the withdrawal of prior counsel, constitutes a procedural default warranting judicial intervention (see CPLR § 321[a]).

Courts have consistently held that such failure may warrant entry of default judgment, as a corporate entity cannot proceed pro se. The First Department affirmed a default judgment entered against a corporate defendant that failed to appear by counsel despite a court order directing it to do so within 30 days. The court held that CPLR § 321(a) mandates corporate appearance through licensed counsel and found no merit in the defendant's attempt to appear via an officer (see Mail Boxes Etc. USA, Inc. v Higgins, 281 AD2d 176 [1st Dept 2001]).

In Jimenez ex rel. Disla v Brenillee Corp., the First Department affirmed entry of judgment against a corporate defendant that failed to appear by counsel, holding that such

wholly or partially within the municipality may appear without counsel in small or commercial claims proceedings under certain provisions of the Uniform City Court Act (§§ 1809, 1809-A), Uniform District Court Act (§§ 1809, 1809-A), and Uniform Justice Court Act (§§ 1809, 501). These exceptions allow such entities to appear by an authorized officer, director, or employee, provided they have authority to bind the corporation in settlement or trial (see Uniform City Court Act § 1809-A[1][d]; see also Uniform District Court Act § 1809[2]; see also Uniform Justice Court Act §§ 501, 1809[2]).

failure constituted a default under CPLR § 321(a). The Court rejected the argument that this defect deprived the court of jurisdiction, emphasizing that the rule does not exist to shield corporate defendants from adverse judgments, but rather "to ensure that the corporation has a licensed representative who is answerable to the court and other parties for his or her own conduct in the matter" (48 AD3d 351, 352 [1st Dept 2008] quoting Matter of Sharon B., 72 NY2d 394, 398 [1988]). This reasoning reinforces the procedural necessity of corporate representation and supports the entry of default where the statutory mandate is ignored.

Here, Star Jets' counsel withdrew following this court's granting of counsel's motion to be relieved. However, the Court expressly directed Star Jets to retain new counsel within 30 days of May 22, 2024 (NYSCEF Doc. No. 200, Decision and Order on mot. seq. no. 009 dated May 22, 2024). In accordance with this order, Star Jets had until June 21, 2024 to retain new counsel. Star Jets has failed to retain counsel or contact the court with an excuse or request for an extension of time. Under these circumstances, the court is compelled to grant plaintiff a judgment pursuant to CPLR § 321(a).

Accordingly, it is hereby

ORDERED that the motion (seq. no. 012) of plaintiff SUSAN STUART pursuant to CPLR §§ 321(a) for leave to enter a default judgment against defendant STAR JETS INTERNATIONAL, INC. is granted; it is further

ORDERED that, within 5 days of this order, plaintiff shall serve a copy of this order on the defendants by overnight mail, and plaintiff shall also file such notice via NYSCEF with service of process within 15 days;

ORDERED that, plaintiff SUSAN STUART shall appear for a hearing to determine the amount damages on the following return date: November 03, 2025, at 11:30 A.M. and it is further

ORDERED, that the Clerk of the Court shall mark the file accordingly.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

8/20/2025
DATE


EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE