

TBF Fin., LLC v Serrano

2025 NY Slip Op 33409(U)

September 9, 2025

Supreme Court, New York County

Docket Number: Index No. 159971/2023

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. 159971/2023

TBF FINANCIAL, LLC

MOTION DATE 06/10/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

ANTHONY T. SERRANO,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for JUDGMENT - DEFAULT

APPEARANCES:

Goetz Platzer LLP, New York, New York (Alexander Hwang, Esq., of counsel) for plaintiff.

HON. EMILY MORALES-MINERVA:

In this action, plaintiff TBF FINANCIAL, LLC, moves, by notice of motion (sequence number 001), pursuant to CPLR § 3215, for an order granting it a default judgment against defendant ANTHONY T. SERRANO. Defendant does not appear or submit opposition to the motion.

For the reasons set forth below, the motion (seq. no. 001) is denied, and the complaint is dismissed.

BACKGROUND

This action was commenced on October 12, 2023, by plaintiff TBF FINANCIAL, LLC (plaintiff) against defendant ANTHONY T. SERRANO (defendant) to recover money allegedly owed under a guaranty agreement (see New York State Courts Electronic Filing System [NYSCEF] Doc. No. 001, Complaint). Defendant was served with the summons and complaint on January 29, 2024, pursuant to CPLR § 308 (1) (governing personal service) (see NYSCEF Doc. No. 006, Affidavit of Service [with a service of process date of January 29, 2024]). By notice of motion (seq. no. 001) filed on March 14, 2025, plaintiff moves for a default judgment pursuant to CPLR § 3215 against defendant.

ANALYSIS

When a defendant fails "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 [the defendant]" (CPLR § 3215 [a]). Generally, the proponent of a default judgment shall file proof of (1) service of the summons and complaint, of (2) the facts constituting the claim, and of (3) the default and the amount due (see CPLR § 3215 [f]).

Further, CPLR § 3215 (c) provides that “[i]f the plaintiff fails to take proceedings for the entry of judgment within one year after [a] default, the court shall not enter judgment but shall dismiss the complaint as abandoned, without costs, upon its own initiative or on motion, unless sufficient cause is shown why the complaint should not be dismissed” (emphasis added). Where, as here, “a party moving for a default judgment beyond one year from the date of default fails to address any reasonable excuse for its untimeliness, courts may not excuse lateness and ‘shall’ dismiss the claim pursuant to CPLR § 3215 (c)” (Giglio v NTIMP, Inc., 86 AD3d 301, 308 [2d Dept 2011]; see also Brown v Andreoli, 81 AD3d 498, 498 [1st Dept 2011]; LCS Capital, LLC v Fernandez, 85 Misc3d 346 [Sup Ct Bx Cnty 2024] [holding that “as the one-year period to move for default judgment passed, the motion is . . . untimely”]).

Here, because defendant was personally served with the summons and complaint on January 29, 2024, defendant had until Tuesday, February 20, 2024,¹ to answer, serve a notice of appearance, or make a motion (see NYSCEF Doc. No. 006, Affidavit of Service; see also CPLR § 320 [a] [governing defendant’s time to answer or otherwise move before a court]). Though defendant failed to answer, serve a notice of appearance, or otherwise

¹ Twenty days from January 29, 2024, is Sunday, February 18, 2024. Monday, February 19, 2024, is a federal holiday, making Tuesday, February 20, 2024, the responsive deadline.

move before this court in the requisite time frame, plaintiff did not file the instant motion for a default judgment until March 14, 2025 (see generally NYSCEF Doc. No. 12, Notice of Motion for a Default Judgment, dated March 14, 2025). Plaintiff fails to address any reasonable excuse for its untimeliness but rather provides, conclusorily, that "defendant has never appeared in this action, and . . . defendant is not prejudiced by this Court's consideration" (NYSCEF Doc. No. 13, Affirmation in Support of Motion).

Notwithstanding the untimeliness, plaintiff does not submit an affidavit by a person with personal knowledge setting forth proof of the facts constituting the breach of the guaranty cause of action (see CPLR § 3215 [f] [requiring an affidavit by a person with knowledge setting forth "proof of the facts constituting the claim", or a verified complaint]). For this, plaintiff relies on the complaint, which is verified by Brett Boehm, identified only as "manager of plaintiff [TBF FINANCIAL LLC]" (NYSCEF Doc. No. 001, Verified Complaint).

Accordingly, it is hereby

ORDERD that plaintiff's motion (seq. no. 001) for a default judgment is denied; it is further

ORDERD that the complaint is dismissed pursuant to CPLR § 3215 (c); and it is further

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

9/9/2025
DATE

Emily Morales-Minerva
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

APPLICATION: GRANTED DENIED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER FIDUCIARY APPOINTMENT REFERENCE

INCLUDES TRANSFER/REASSIGN