

TD Bank, N.A. v DBMS Consulting, Inc.

2025 NY Slip Op 33452(U)

September 8, 2025

Supreme Court, New York County

Docket Number: Index No. 654983/2024

Judge: James G. Clynes

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JAMES G. CLYNES PART 39M

Justice

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TD BANK, N.A.,

Plaintiff,

- v -

DBMS CONSULTING, INC., SUNIL G. SINGH

Defendants.

INDEX NO. 654983/2024

MOTION DATE 06/19/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

were read on this motion to/for JUDGMENT - DEFAULT.

In this action to recover damages for breach of a loan agreement and injunctive relief related to collateral secured by a commercial security agreement, plaintiff TD Bank N.A. (“plaintiff”), moves for default judgment pursuant to CPLR 3215 against defendants DBMS Consulting, Inc. (“borrower”) and Sunil G. Singh (“guarantor”) (collectively referred to as “defendants”). Upon the foregoing documents and for the following reasons, plaintiff’s unopposed motion is granted.

On a motion seeking to enter a default judgment pursuant to CPLR 3215, a movant is required to submit proof of service of the summons and complaint, the facts constituting the cause of action, and the defendant’s default in answering or appearing (*see* CPLR 3215; *see also Bigio v Gooding*, 213 AD3d 480, 481 [1st Dept 2023]). To demonstrate the facts constituting the cause of action, the movant must submit sufficient proof to enable a court to determine if the cause of action is viable (*see Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). The court may consider the complaint, affidavits and affirmations submitted by the plaintiff (*id.*). A complaint may be used as the affidavit of the facts constituting the claim and the amount due under CPLR 3215 (f), if the complaint is verified by plaintiff (*see Nedeltcheva v MTE Transp. Corp.*, 157 AD3d 423, 423 [1st Dept 2018]). Additionally, the proponent of an unopposed motion for default judgment bears the burden of establishing inter alia, that the defendant was properly served with the motion for default judgment (*see* CPLR 306; 3215 [g]).

Plaintiff provided proof that the guarantor was served with the summons and complaint pursuant to CPLR 308 (*see* NY St Cts Elec Filing [NYSCEF] Doc No. 10), and the borrower was served through the Secretary of the State pursuant to BCL § 306 (b) (*see* NYSCEF Doc No. 8). Additionally, plaintiff complied with the additional notice requirements of CPLR 3215 (g) (*see* NYSCEF Doc No. 9), filed proof of the guarantor's non-military status (*see* NYSCEF Doc No. 22), and filed an affirmation of service establishing that the motion for default judgment was served on defendants (*see* NYSCEF Doc No. 24). None of these defendants have appeared or answered the complaint within the time provided under the CPLR, nor obtained an order from the Court extending their time to do so. Based on the foregoing, defendants have defaulted in this action.

Plaintiff satisfies the burden of demonstrating that plaintiff possesses a viable claim (*see* CPLR 3215 [f]). Plaintiff's submission of the affidavit of Kimberly Hall Mitchell, establishes, *prima facie*, the facts supporting the breach of contract cause of action by showing that there was formation of a contract between the parties, performance by plaintiff, defendants' failure to perform, and resulting damages (*see Flomenbaum v New York Univ.*, 71 AD3d 80, 91 [1st Dept 2009]; *see* NYSCEF Doc No. 11). The proof submitted demonstrates that defendants are indebted to plaintiff with respect to the promissory note executed on November 28, 2018. Under the note, defendants owe principal in the sum of \$84,374.44, accrued interest of \$16,619.41, plus site visit fees of \$150 and per diem interest of \$24.33 at the rate of 10.38% (*id.*). Plaintiff's submission also demonstrates proof of a blanket security interest given to it by defendants in all of defendants' assets (*see* NYSCEF Doc No. 16). The security interest was perfected by a UCC-1 Financing Statement bearing file number 20188400778, filed against the borrower in the New York State Department of State on December 5, 2018 (*see* NYSCEF Doc No. 17). After the borrower defaulted on the Loan Agreement, plaintiff issued a written notice and demand for payment (*see* NYSCEF Doc No. 19). On August 6, 2024, plaintiff sent defendants a letter demanding assembly and turnover of collateral, access to the business premises for an evaluation of collateral, all to be provided within fifteen days (*id.*). Defendants did not pay the balance due or turn over the collateral. Based on the foregoing, plaintiff has proven entitlement to an order declaring that defendants' right or title to, or interest in, the collateral is permanently foreclosed, and that plaintiff is entitled to possession of the collateral and directing defendants to assemble and make collateral available to plaintiff for inspection, appraisal and sale or other disposition pursuant to the Uniform Commercial Code. In support of plaintiff's request for attorneys' fees, the detailed time and billing

records supplied and affirmed by plaintiff's attorneys show that, the law firm expended 21.4 hours of work in this action and incurred \$4,305.50 in legal fees. The attorneys also incurred \$911.28 in costs and disbursements (*see* NYSCEF Doc No. 20-21). The Court finds that the amount requested is reasonable.

Accordingly, it is hereby

ORDERED that the motion of plaintiff TD Bank N.A. made pursuant to CPLR 3215, seeking an order granting plaintiff a default judgment against defendants DBMS Consulting, Inc., and Sunil G. Singh is granted, and the Clerk is hereby directed to enter a judgment in favor of plaintiff TD Bank, N.A. and against defendants DBMS Consulting Inc. and Sunil G. Singh, in the amount of \$101,143.85 (\$84,374.44 in principal, plus \$16,619.41 in accrued interest of, plus \$150 in site visit fees), plus contractual per diem interest of \$24.33 from May 30, 2025, plus reasonable attorney's fees and costs of \$5,216.78; and it is further

ORDERED that defendant DBMS Consulting Inc., is hereby ordered to make the Collateral described in the UCC-1 Financing Statement 20188400778, filed as NYSCEF Doc. No. 17, available to plaintiff TD Bank N.A., for sale or other disposition pursuant to the Uniform Commercial Code; and it is further

ORDERED that plaintiff TD Bank N.A., is hereby authorized to sell, liquidate, dispose of or retain the Collateral in a commercially reasonable manner, with the proceeds from the same being applied first to the costs of such sale or other disposition and then in reduction of the amounts due from defendant DMBS Consulting Inc.; and it is further

ORDERED that defendant DMBS Consulting Inc., is hereby restrained from any use of the Collateral; and it is further

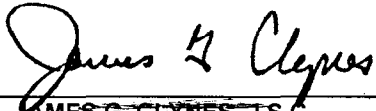
ORDERED that defendant DMBS Consulting Inc., is hereby required to hold all collateral and all proceeds from Collateral in trust for plaintiff TD Bank, N.A.; and it is further

ORDERED that the Court hereby issues a Writ of Replevin directed to the Sheriff or other lawfully authorized officer(s) of any county where the Collateral may be found and directing that such Sheriff or other officer(s) take immediate possession of the Collateral and deliver same to plaintiff TD Bank, N.A., the court-appointed receiver; and it is further

ORDERED that plaintiff shall serve a copy of this decision with notice of entry on all non-appearing parties by regular and overnight mail within 20 days of this order and upload an affidavit of service; and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-filing" page on the court's website at the address www.nycourts.gov/supctmanh).

9/8/2025
DATE



JAMES G. CLYNES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE