

**Stafford Bus. Funding, LLC v Robertson Auction Co.,
LLC**

2025 NY Slip Op 33595(U)

September 25, 2025

Supreme Court, New York County

Docket Number: Index No. 653800/2024

Judge: James G. Clynes

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

PRESENT: HON. JAMES G. CLYNES PART 39M

Justice

-----X
STAFFORD BUSINESS FUNDING, LLC, INDEX NO. 653800/2024
Plaintiff, MOTION DATE 01/27/2025
MOTION SEQ. NO. 001

- v -

ROBERTSON AUCTION COMPANY, LLC AND
CHRISTOPHER ROBERTSON,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X
The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16

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

Plaintiff Stafford Business Funding, LLC, (“plaintiff”) commenced this action against defendants Robertson Auction Company, LLC, (“RAC”) and Christopher Robertson (“Robertson”) (together “defendants”) for allegedly owing money to plaintiff under a merchant cash advance contract and guaranty.

In the current motion, plaintiff moves for a default judgment against defendants, pursuant to CPLR 3215, for failing to appear or answer the summons and complaint. Plaintiff is requesting that judgment be entered in the amount of \$26,548.52. There is no opposition to the motion.

For the reasons stated below, plaintiff’s motion for a default judgment is granted without opposition.

BACKGROUND FACTS AND PROCEDURAL HISTORY

Plaintiff provides “advance payments to small businesses in exchange for a percentage of the businesses’ future revenue,” also known as standard merchant cash advance agreements or revenue purchase agreements (NYSCEF Doc No. 6, Mayer affirmation, ¶ 4; NYSCEF Doc No. 7, Mayer affirmation, exhibit 1, contract). On June 24, 2024, plaintiff and defendants entered into an agreement (“the agreement”) where plaintiff purchased \$12,665 of RAC’s future account receivables (“purchased amount”) in exchange for a lump-sum payment of \$8,500 (“purchased price”) (NYSCEF Doc No. 7; *see also* NYSCEF Doc No. 6, ¶ 6). The parties agreed that RAC was

to remit “periodic” payments to plaintiff drawn from its revenue until the purchased amount was satisfied (NYSCEF Doc No. 6, ¶¶ 6-7; NYSCEF Doc No. 7, p. 3).

Per the agreement, plaintiff would withdraw daily remittances from a bank account provided by defendants (NYSCEF Doc No. 6, ¶ 10). The daily remittance to plaintiff was calculated as a good faith approximation by the parties of “(a) the purchased percentage multiplied by (b) the gross revenue of RAC during the previous calendar month divided by (c) the number of business days in the previous calendar month” (NYSCEF Doc No. 8, Mayer affirmation, exhibit 2, settlement agreement, p. 1; NYSCEF Doc No. 7, p. 3). Robertson would also guaranty RAC’s performance under the agreement (NYSCEF Doc No. 7, pp. 12-13).

If defendants default, the agreement provides that the uncollected purchased amount plus any applicable fees becomes immediately due to plaintiff in full (NYSCEF Doc No. 7, pp. 3, 4, 9). The default fee is set at \$5,000 without limitation of other applicable fees, and attorney’s fees are set at “\$7,500 or 33 1/3 % of the amounts to be collected, whichever amount is greater . . . to be collected upon the entry of judgment against” defendants (*id.*, p. 14).

RAC failed to make the required remittances to plaintiff and defaulted on the agreement (NYSCEF Doc No. 6, ¶ 15). On July 29, 2024, plaintiff commenced this action and served defendants the summons and complaint on July 31, 2024, via mail, pursuant to the agreement (NYSCEF Doc No. 11, Gardner affirmation, exhibit b, affirmation of service). Plaintiff then emailed the same documents to defendants on August 12, 2024 (*id.*).

After plaintiff sued, plaintiff and defendants entered into a settlement agreement where defendants acknowledged that the balance due to plaintiff was \$10,798.52, but agreed to pay \$8,455.00 pursuant to a settlement agreement (NYSCEF Doc No. 6, ¶¶ 17-18; NYSCEF Doc No. 8). Defendants also “each acknowledged that they breached the contract” (NYSCEF Doc No. 8, p. 2). In the event of the default, however, the settlement agreement provides that defendants will be immediately liable for the full amount of \$10,798.52, plus the applicable fees and charges as provided in the agreement (*id.*, p.3). Defendants made two payments of \$600 and one payment of \$550 only, and then defaulted and blocked plaintiff’s scheduled withdrawal (NYSCEF Doc No. 6, ¶¶ 18-19). The full uncollected amount under the settlement agreement is \$9,048.52 plus the applicable fees (*id.*, ¶¶ 21-22).

Plaintiff's motion seeks entry of a default judgment against defendants in the amount of \$26,548.52, "plus interests, costs, and disbursements to be determined by the Clerk or Court" (NYSCEF Doc No. 5).

DISCUSSION

To obtain a default judgment, the movant is required to submit proof of (1) service of process of the summons and complaint, (2) proof of the facts constituting the claim, and (3) the non-moving party's default (CPLR 3215; *see also Bigio v Gooding*, 213 AD3d 480, 481 [1st Dept 2023] ["A party seeking a default judgment must submit proof of service of the summons and the complaint and 'proof of the facts constituting the claim, the default and the amount due'"]). CPLR 3215(f) governs the proof that must be submitted in an application for a default judgment (CPLR 3215 [f]).

As an initial matter, the parties did not include an express stipulation of discontinuance of the action in their settlement agreement, thus the "settlement does not terminate the action, or the court's exercise of authority to supervise enforcement of the agreement" (*Najarro v Summit Sec. Servs.*, 249 AD2d 51, 54 [1st Dept 1998]; *see also Malvin v Schwartz*, 48 NY2d 693, 694 [1979] ["since the parties [have] not executed an express stipulation of discontinuance of the action, or entered judgment in accordance with their settlement agreement, the action had not terminated ... [and] the settlement is amenable to enforcement by motion"] [citations omitted]).

Plaintiff has demonstrated that defendants were served and that their time to answer or otherwise appear in the action has expired. The proof of service of the summons and complaint can be shown through "an affidavit of service by a process server with direct knowledge of the service" (CPLR 3215) and such affidavit of service "constitutes prima facie evidence of proper service" (*HSBC Bank USA v Gifford*, 224 AD3d 447 [1st Dept 2024]). An affirmation of service sworn on July 31, 2024, affirms that that defendants were each served with plaintiff's summons and complaint and the notice of electronic filing at their address via certified mail on the same day (NYSCEF Doc No. 11). The same documents were then emailed to defendants on August 12, 2024 (*id.*). Service was thus complete pursuant to the parties' agreement, which provides that the merchant and the guarantor "waive personal service" of the summons and complaint or "other process" to commence the litigation (NYSCEF Doc No. 7, p. 10). "[P]arties to a contract are free to contractually waive service of process" (*Alfred E. Mann Living Trust. v ETIRC Aviation S.A.R.L.*, 78 AD3d 137, 140 [1st Dept 2010] [citations omitted]).

Defendants were also served with additional service of the summons and complaint. Pursuant to CPLR 3215 (g) (3) (i), a copy of the summons and complaint and plaintiff's notice of electronic filing were mailed to Roberston's address on December 19, 2024 (NYSCEF Doc No. 12, notice of default). Plaintiff also submitted an affirmation that Robertson is not on military duty (NYSCEF Doc No. 14, affirmation of non-military status). A copy of the summons and complaint and plaintiff's notice of electronic filing were also mailed to RAC pursuant to CPLR 3215 (g) (4) on December 19, 2024 (NYSCEF Doc No. 13). Further, on January 28, 2025, plaintiff mailed a notice of the default motion to defendant with the annexed supporting documents (NYSCEF Doc No. 14, certificate of service). Plaintiff has demonstrated that service of process on defendants was completed and that the time for defendants to answer or otherwise appear in this action has expired.

Plaintiff also submitted sufficient proof of facts constituting the claim of breach of contract and breach of guaranty through an affidavit from a plaintiff's representative with the annexed supporting documents. "To demonstrate 'facts constituting the claim,' the movant need only proffer proof sufficient "to enable a court to determine that a viable cause of action exists" (*Bigio v Gooding*, 213 AD3d 480, 481 [1st Dept 2023]). "The movant may do so either by submission of an affidavit of merit or by verified complaint, if one has been properly served" (*id.*). "The elements of a breach of contract claim are (1) the existence of a contract, (2) the plaintiff's performance, (3) the defendant's breach, and (4) resulting damages" (*Alloy Advisory, LLC v 503 W. 33rd St. Assoc., Inc.*, 195 AD3d 436, 436 [1st Dept 2021] [citations omitted]). Plaintiff established that a binding agreement exists, and defendants breached the terms of the agreement by failing to make the required remittances to plaintiff. In fact, defendant acknowledged in their settlement agreement with plaintiff that they breached the terms of the contract and that the unpaid balance due to plaintiff was \$10,798.52 (NYSCEF Doc No. 8, p. 2).

The defendants defaulted as established by plaintiff's attorney's affirmation stating that defendant failed to appear or answer the complaint (NYSCEF Doc No. 9, ¶ 14). The case docket further supports defendants' default because it shows that they failed to appear on the case and answer the complaint. "By failing to answer, the defaulting defendants are 'deemed to have admitted' the allegations in the complaint" (*State Farm Mut. Auto. Ins. Co. v Surgicore of Jersey City, LLC*, 195 AD3d 454, 455 [1st Dept 2021] [citations omitted]; *see also Al Fayed*, 39 AD3d at 372 ["Having failed to answer the allegations, defendant is deemed to have 'admit[ted] ... all traversable allegations in the complaint, including the basic allegations of liability'"]).

As to the \$26,548.52 that plaintiff seeks to recover, the amount is broken down as follows:

- \$9,048.52 (the amount the parties agreed was due to plaintiff minus the \$1,750 that defendants paid pursuant to the settlement agreement [NYSCEF Doc No. 8, p. 2; NYSCEF Doc No. 6, §§ 17-22])
- plus the default fee of \$5,000 (NYSCEF Doc No. 7, p. 14)
- plus \$7,500 for the attorney’s fees (which per the contract is \$7,500 or 33 1/3% of the amounts to be collected, whichever is greater [NYSCEF Doc No. 6, § 14; NYSCEF Doc No. 7, p. 9])
- plus \$5,000 in blocked account fee (NYSCEF Doc No. 6, §§ 21-22; NYSCEF Doc No. 7, p. 14).

Between the settlement agreement, showing that the parties agreed to the amount that was due to plaintiff, and the added fees pursuant to the settlement agreement and the underlying agreement, the court grants plaintiff default judgment against defendants RAC and Robertson in the amount of \$26,548.52.

The court has considered plaintiff’s remaining contentions and finds them unavailing.

CONCLUSION and ORDER

Accordingly, it is

ORDERED that plaintiff Stafford Business Funding, LLC’s motion for default judgment is granted against defendants Robertson Auction Company, LLC, and Christopher Robertson in the amount of \$26,548.52; and it is further

ORDERED that the Clerk is directed to enter judgment against defendants Robertson Auction Company, LLC, and Christopher Robertson in the amount of \$26,548.52; and it is further

ORDERED that plaintiff, within 20 days of the uploading of this decision and order on NYSCEF, shall serve a copy of this decision and order with notice of its entry on defendant by mail and on the office of the County Clerk, which shall enter judgment accordingly.

9/25/2025
DATE



JAMES G. CLYNES, J.S.C.

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