

Cambridge Advance, LLC v Drivers Direct LLC

2025 NY Slip Op 33602(U)

October 1, 2025

Supreme Court, Rockland County

Docket Number: Index No. 031248/2025

Judge: Keith J. Cornell

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

CAMBRIDGE ADVANCE, LLC

Plaintiff,

Index #: 031248/2025

(Motion Sequence #1)

-against-

DECISION AND ORDER

DRIVERS DIRECT LLC D/B/A DRIVERS DIRECT
and JOSE MUNOZ,

Defendants.

PRESENT: HON. KEITH J. CORNELL, A.J.S.C.

Before the Court is Defendants’ motion pursuant to CPLR § 5015 and CPLR § 317 seeking (i) an order vacating a default judgment entered on March 13, 2025, against each of the above captioned Defendants; and (ii) for an order pursuant to CPLR § 3211 dismissing the Verified Complaint with prejudice for failure to state a claim, lack of personal jurisdiction and lack of subject matter jurisdiction. The Court has read and considered NYSCEF documents 11-16; 21-27 in deciding the motion.

Background

On January 22, 2025, Defendant JOSE Munoz entered into a Sale of Future Receipts Agreement (“Agreement”) with Drivers Direct LLC D/B/A Drivers Direct (“Merchant”) on behalf of the company. (NYSCEF 22). Mr. Munoz also personally signed the Agreement as guarantor. Per the terms of the Agreement, Merchant sold \$521,500.00 of its future receivables to Plaintiff (“CAMBRIDGE ADVANCE”) for the purchase price of \$350,00.00. Merchant agreed to an aggressive repayment schedule, which allowed CAMBRIDGE ADVANCE to debit the amount of \$6,518.75.00 from Merchant’s bank account every business day to satisfy the obligation. The purchase amount and repayment were set at 20% of Merchant’s receivables.

This action was commenced by way of a Summons and Complaint filed on February 25, 2025, alleging breach of contract and seeking enforcement of the personal guarantee. (NYSCEF 1). Plaintiff alleged that Defendants breached the Agreement after remitting \$78,225.00, leaving a balance of \$443,275.00. Plaintiff also alleged that Defendants owed default fees in the amount of \$146,280.75, for a total of \$589,555.75 plus interest, costs, and disbursements. An Affirmation of Service indicates that service of the Summons and Complaint was effected upon Merchant via Certified Mail, return receipt requested, on February 26, 2025 pursuant to an agreement of the parties. (NYSCEF 2). Defendants failed to appear, answer or request an extension of time to respond to the Complaint.

On March 3, 2025 the parties entered a Stipulation of Settlement with Leave to Apply for Default Judgment Pursuant to CPLR § 3215(i) (“Stipulation”) (NYSCEF 3). The Stipulation was signed by Defendant, Jose Munoz and Ariel Bouskila, Esq., attorney for Plaintiff.

Plaintiff filed a proposed judgment with Affidavit of Non-Payment with the Rockland County Clerk on March 11, 2025. (NYSCEF 4, 5)¹. The Judgment with Bill of Costs was entered by the County Clerk on March 13, 2025. The instant motion was filed by Defendants on May 12, 2025. The parties stipulated to adjourn the motion return date to July 18, 2025, and Plaintiff’s response was due by June 27, 2025. Plaintiff’s opposition was submitted on June 25, 2025. A memorandum in reply was submitted by Defendants on July 11, 2025.

Arguments

Defendants move for an order vacating the default judgment pursuant to CPLR § 5051(a) (1). Defendants also move for an order dismissing the Complaint pursuant to CPLR § 3211(a) (2),

¹ The filing also included a copy of the Summons and Complaint and a copy of the Stipulation (NYSCEF 6, 7).

(a) (7) and (a) (8). Defendants assert that underlying Agreement entered by the parties on January 22, 2025, is in fact a usurious loan. Defendants point out that a copy of the Agreement was not filed by Plaintiff with the Complaint and submit a copy via Affidavit of Defendant Munoz. Defendants argue that the Agreement is a usurious loan masquerading as a “Merchant Cash Advance Agreement” that has an effective interest rate of 155% making it criminally usurious as a matter of law. Defendant asserts that Plaintiff filed the Complaint against the two Texas-based Defendants, purportedly serving them by mail, pressured Defendants into a settlement agreement they could not afford and then moved for default judgment based on the original Complaint. Defendants also claim that service of the Complaint by mail pursuant to the Agreement is void and unenforceable. Defendants allege that they were not served with a default motion. Defendants set forth the standard for vacatur of a default judgment pursuant to CPLR § 5015 (a) (1), claiming that they have a reasonable excuse and a meritorious defense. Defendants posit that the provision of the Agreement permitting service by mail is void because they allege the Agreement is unenforceable. They claim their meritorious defense is that the Agreement is a criminally usurious loan and thus void. Defendants also argue that the reconciliation provision of the Agreement is illusory.

In opposition, Plaintiff argues that the judgment at issue was not entered due to Defendants’ failure to appear, rather it was entered as a result of their failure to comply with their obligation pursuant to the Stipulation by failing to make any payments in breach of that agreement. Plaintiff argues that Defendants agreed in the Stipulation that they were properly served with the Complaint which precludes their argument sounding in lack of proper service. Plaintiff points out that the Stipulation states that upon Defendants’ default there is no cure period and permits Plaintiff to enter judgment for the balance due plus attorney’s fees. Plaintiff disputes the allegation that that

underlying Agreement is a usurious loan. Plaintiff argue that the alleged meritorious defense of unconscionability must fail because the Agreement contains reasonable commercial terms.

In reply, Defendants assert that Plaintiff's argument that Defendants waived their rights to personal service in this action fails because the Stipulation of Settlement did not authorize service by certified mail and that the integration clause in the Stipulation makes that document the only relevant document for purposes of determining proper service. As to a meritorious defense, Defendants repeat that the Stipulation seeks to enforce an agreement based on a usurious loan.

Discussion

Defendants do not dispute the fact that Plaintiff and Defendants entered into the subject Stipulation of Settlement. The Court finds that the judgment at issue was entered pursuant the Stipulation. As set forth in *Samson MCA LLC, v Weiler*, Index No. 032379/2024 this Court (Schwartz, J.) reasoned that

Stipulations of settlement between parties are binding contracts and, as such, they are favored and "not lightly cast aside" (*Rogers v Malik*, 126 AD3d874, 875 [2d Dept 2015] quoting *Hallock v State of New York*, 64 NY2d224 [1984]; see also *Matter of Galasso*, 35 NY2d3 19 [1974]). "Only where there is a legally sufficient cause to invalidate a contractual obligation, such as where it is manifestly unfair to one party because of the other's overreaching or where its terms are unconscionable or constitute fraud, collusion, mistake, or accident, will a party be relieved from the consequences of the bargain struck with the stipulation" (*Rogers*, 126 AD3dat 875 citing *Matter of Matinzi v Joy*, 60 NY2d835 [1983]; *Matter of Mercer*, 113 AD3d772 [2d Dept 2014] ; *Esposito v Podolsky*, 104 AD3d903 [2d Dept 2013]; *Barzin v Barzin*, 158 AD2d769 [3d Dept 1990]). "More than mere or conclusory allegations are required, ... since stipulations of settlement serve the interests of efficient dispute resolution, the proper management of court calendars and the integrity of the litigation process" (*Rogers*, 126 AD3dat 875).

The Court finds that the parties entered a duly executed Stipulation of Settlement which provides for the entry of a judgment, without notice, in a specified amount with interest from a date certain. As in *Samson MCA supra*, Defendants neither dispute the existence of the Stipulation

of Settlement nor challenge its validity. The Defendants' claim that they were pressured to enter the Stipulation is merely conclusory and unsupported in the record.

Upon review, each of the arguments raised by Defendants in support of their motion is precluded by the terms of the valid Stipulation. First, the application for relief from the judgment entered on default pursuant to CPLR § 5015 is misplaced. A court may relieve a party from a judgment upon a default in appearing under CPLR § 5015[a][1]). To establish entitlement to this remedy, movant must demonstrate both a reasonable excuse for the default and a meritorious defense (*see e.g. Nationstar Mtge, LLC v Ramnarie*, 172 AD3d886, 886 [2d Dept 2019]; *Mid Hudson Props, Inc v Klein*, 167 AD3d862 [2d Dept 2018]). Here, the judgment was not entered based upon Defendants' failure to appear in this action. Rather, the judgment was entered pursuant to the terms of the Stipulation which Defendant Munoz entered on his own volition.

In the first "Whereas Clause" the Stipulation provides an acknowledgment of the parties that there is an unpaid balance of \$589,555.75. The Stipulation provides that upon default of payment on the date due, Defendants shall have no right to cure, and Plaintiff can elect to enforce all provisions of the Stipulation without further notice. Stipulation at ¶ 8. The Stipulation provides further that "[i]n the event that the Plaintiff that [sic] declares a default under this Stipulation, Plaintiff may at its option, apply for entry of a default judgment without notice against the Defendants and Guarantor, pursuant to CPLR § 3215(i). "Such application for entry of default judgment will include an affidavit or affirmation specifying the default and the amount of the unpaid balance of the entire abovementioned obligation." Stipulation at ¶ 9. There is no allegation by Defendants that the default judgment lacked the requisite supporting documents.

CPLR§ 3215(i) provides:

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, and, if applicable, a statement that the interest rate for consumer debt pursuant to section five thousand four of this chapter applies.

N.Y. CPLR § 3215(i). The Stipulation was crafted to meet the requirements of this provision.

Next, Defendants' argument that proper service was not effected upon them must fail. Notably, the underlying Agreement provides for service of process by certified or registered mail. Proof of such service is on file with the Court. Notwithstanding those facts, the Stipulation states that Defendants consent to the jurisdiction of this court and consent to have accepted service of the Summons and Verified Complaint. Stipulation at ¶ 1. This fact undermines Defendants' claim under CPLR § 3211 (8).

Turning to Defendants' application to dismiss the action for failure to state a claim pursuant to CPLR § 3211 (7) and for lack of subject matter jurisdiction pursuant to CPLR § 3211 (8), these claims must fail as well. Upon entering the Stipulation, Defendants waived their rights to assert any claims as against Plaintiffs outside of enforcement of the Stipulation. By entering the settlement, Defendants acknowledged that any and all legal claims they might maintain must be brought by a breach of [the Stipulation] only. Stipulation at ¶ 6.

The Court has considered the remaining arguments and deems them without merit.

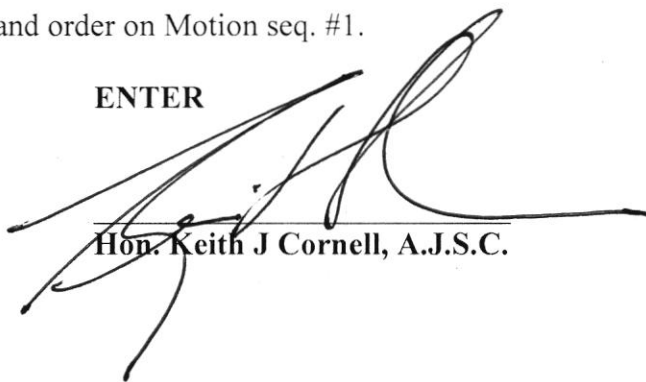
ORDERED, that the branch of Plaintiff's motion to vacate default judgment pursuant to CPLR § 5015 and CPLR § 317 is **DENIED**; it is further

ORDERED, that the branch of Plaintiff's motion to dismiss the Verified Complaint is **DENIED**.

This constitutes the Court's decision and order on Motion seq. #1.

Dated: October 1, 2025
New City, New York

ENTER



Hon. Keith J Cornell, A.J.S.C.

To: ALL COUNSEL VIA NYSCEF