

Ahmed v Ahmed

2025 NY Slip Op 33668(U)

September 24, 2025

Supreme Court, New York County

Docket Number: Index No. 653463/2024

Judge: Anar Rathod Patel

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 45

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SHOGY AHMED,

Plaintiff,

- v -

HAYTHAM AHMED, SHOGY MARKETPLACE
CORP. d/b/a MANHATTAN MARKETPLACE, and
SALEH SALEH,

Defendants.

INDEX NO. 653463/2024

MOTION DATE 06/04/2025,
06/18/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTIONS

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HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 15–39, 41 were read on these cross-motions to/for DEFAULT JUDGMENT.

Pursuant to 22 NYCRR 202.27, if, at any scheduled call of the calendar, the defendant appears but the plaintiff does not, the Court may note the default on the record and enter an order dismissing the action (*Campos v. New York City Health & Hosps. Corp.*, 307 AD2d 785 [1st Dept 2003]).

Here, the Court issued a Notification of Court on August 4, 2025 directing the parties to provide a status letter to the Court within fourteen days and including the following language: “Failure to comply with this Court directive may result in adverse outcomes to the party/ies, including dismissal of this action” (NYSCEF Doc. No. 43 (Notification from Court)). Plaintiff did not comply with the Court’s directives and failed to file any such status letter; Plaintiff’s counsel likewise did not respond to outreach from Defendants’ counsel (NYSCEF Doc. No. 44 (August 20, 2025 Letter to Justice Patel re: Joint letter directive)).

Thereafter, on August 20, 2025, the Court directed that the parties appear for an in-person conference on August 28, 2025, and included the following language: “Failure to appear pursuant to this notification, and the August 4, 2025 Court Notification, will result in dismissal of claims and/or a finding of default” (NYSCEF Doc. No. 46 (Court Notice)). Counsel for Defendants appeared at the August 28, 2025 appearance; counsel for Plaintiff did not appear or otherwise contact the Court (NYSCEF Doc. No. 47 (Certified transcript of proceeding)).

Accordingly, and pursuant to the reasons set forth on the record at the August 28, 2025 appearance, the Court dismisses Plaintiff’s claims in this action and denies Plaintiff’s Motion for Default Judgment against Defendant Saleh Saleh with prejudice.

The Court now considers Defendants' Haytham Ahmed, Shogy Marketplace Corp., and Saleh Saleh (collectively, "Defendants") Cross-Motion for Default Judgment against Plaintiff. Plaintiff does not oppose the Cross-Motion.

Plaintiff commenced this action by filing the Verified Summons and Complaint on July 9, 2024 (NYSCEF Doc. No. 1). Defendants Haytham Ahmed and Shogy Marketplace Corp. filed their Answer on July 30, 2024 (NYSCEF Doc. No. 2). Thereafter, Plaintiff's unopposed Motion to Amend the Complaint to add Saleh Saleh as a defendant was granted by the Court on January 6, 2025 (NYSCEF Doc. No. 10, Decision and Order on Motion; NYSCEF Doc. No. 9, Proposed Amended Complaint). Plaintiff served the Notice of Entry of the Court's January 6, 2025 Decision and Order, Summons, and Amended Complaint upon Defendant Saleh Saleh on February 11, 2025 (NYSCEF Doc. No. 14). Defendants—including Saleh Saleh—filed an Amended Answer with Counterclaims on February 26, 2025 (NYSCEF Doc. No. 13).

On June 4, 2025, Plaintiff moved for default judgment against Defendant Saleh Saleh (NYSCEF Doc. No. 15). Defendants filed the instant Cross-Motion on June 18, 2025, for default judgment against Plaintiff for his failure to reply to the Counterclaims in Defendants' Amended Answer within the 30-day time frame pursuant to CPLR § 3012 (NYSCEF Doc. Nos. 31; 38, ¶ 34). Plaintiff does not oppose Defendants' Cross-Motion, but rather filed a reply to Defendants' Counterclaims on July 1, 2025 (NYSCEF Doc. No. 42). As discussed *supra*, Plaintiff's Motion is denied with prejudice. The Court also denies Defendants' Cross-Motion for the reasons set forth *infra*.

On a motion for default judgment pursuant to CPLR § 3215, the moving party must submit proof of service of the summons and complaint, proof of the facts constituting the cause of action, and proof of the defaulting party's failure to appear and amount due (*see* CPLR § 3215[f]; *Bigio v Gooding*, 213 AD3d 480, 481 [1st Dept 2023]). "[A] complaint verified by someone or an affidavit executed by a party with personal knowledge of the merits of the claim" satisfies this statutory requirement (*Beltre v Babu*, 32 AD3d 722, 723 [1st Dept 2006]; *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003] [stating that "the affidavit or verified complaint need only allege enough facts to enable a court to determine that a viable cause of action exists"]). "CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear has been shown" (*Welz v Brown*, 228 AD3d 416, 418 [1st Dept 2024]). The moving party must also offer "some proof of liability . . . to satisfy the court as to the prima facie validity of the uncontested cause of action" (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). "The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts" constituting the claim (*id.*). The moving party must seek a default judgment within one year from the default in responding to the complaint (*see* CPLR § 3215[c]; *MTGLQ Invs., L.P. v Shay*, 190 AD3d 527, 528 [1st Dept 2021]).

The Court finds availing Defendants' argument that CPLR § 3215 applies to counterclaims even though the statute does not specifically mention counterclaims (*see K's International Polybags Mfg. Ltd. v M.T. Packaging Inc.*, 2019 NY Slip Op. 30333(U), *2 [Sup Ct, NY County 2019]). As a preliminary issue, Defendants timely served, pursuant to CPLR § 3012[a], their Amended Answer upon Plaintiff through NYSCEF within 20 days of being served with the Amended Complaint; therefore Defendants have submitted proper proof of service as to the Counterclaims (*see* NYSCEF Doc. Nos. 13, 14). Also, Defendants adequately establish through

their attorney's affirmation and Defendants' affirmations that Plaintiff did not timely file a reply to the Amended Answer within 20 days of being served *via* e-filing on NYSCEF on February 26, 2025 (*see* CPLR § 3012[a]). Defendants filed their Cross-Motion seeking a default judgment against Plaintiff on June 18, 2025, which is within one year from the default as required by CPLR § 3215[c]. The Court notes that Plaintiff filed a late reply to the Counterclaims without seeking leave of the Court (CPLR § 3012[d]; *see L&Z Masonry Corp. v Mose*, 167 AD3d 728, 729 [2d Dept 2018]). As such, Plaintiff did not present a reasonable excuse for his default and subsequent delay in answering the Counterclaims (*see L&Z Masonry Corp.*, 167 AD3d at 729). Moreover, Plaintiff does not oppose the Cross-Motion, let alone file a motion seeking for the Court to deem his reply timely served *nunc pro tunc* (*see id.* at 730).

The Court now reviews the proof of claims. In their Amended Answer, Defendants state Counterclaims for: (1) breach of an oral agreement between Plaintiff and Defendants Shogy Marketplace Corp. and Saleh Saleh; (2) tortious interference with economic relations as to all three Defendants against Plaintiff; (3) tortious interference with contractual relationship as to Defendants Shogy Marketplace Corp. and Saleh Saleh against Plaintiff; (4) intentional infliction of emotional distress as to Defendant Haytham Ahmed against Plaintiff; and (5) conversion as to Defendants Shogy Marketplace Corp. and Saleh Saleh against Plaintiff (*see* NYSCEF Doc. No. 36, Exhibit 4).

To prevail on their breach of oral contract counterclaim, Defendants must establish that a contract exists between the parties, that Defendants performed in accordance with same contract, and that Plaintiff breached his contractual obligations resulting in damages (34-06 73, *LLC v Seneca Ins. Co.*, 39 NY3d 44, 52 [2022]). Defendants must demonstrate “the essential terms of the parties’ purported contract, including specific provisions of the contract upon which liability is predicated” (*Hempel v Wise*, 224 AD3d 574, 575 [1st Dept 2024]).

Here, Defendants submit with their Cross-Motion their Amended Answer with Counterclaims verified by counsel (NYSCEF Doc. No. 36), the affirmation of counsel (NYSCEF Doc. No. 32), Defendant Haytham Ahmed’s affirmation (NYSCEF Doc. No. 33), and Defendant Saleh Saleh’s affirmation (NYSCEF Doc. No. 37). Defendants’ counsel later e-filed an amended affirmation (NYSCEF Doc. No. 41). Counsel’s affirmation is devoid of evidentiary value and insufficient to support entry of a judgment (*Beltre*, 32 AD3d at 723; *Feffer*, 210 AD2d at 61). Haytham Ahmed’s affirmation does not include any facts related to the existence of an oral agreement or even communications with Plaintiff that would give rise to a contract (*see Hamrick v Schain Leifer Guralnick*, 146 AD3d 606, 607 [1st Dept 2017]). Also, Saleh Saleh’s affirmation does not set forth facts related to an oral contract. Moreover, Saleh Saleh affirms that there was no written agreement between the parties to make plaintiff a partner or investor in Shogy Marketplace. Thus, Defendants do not adequately state a counterclaim for breach of oral contract.

Next, the Court considers Defendants’ second counterclaim, tortious interference with economic relations. Defendants “must plead that the [plaintiff] directly interfered with a third party and that the [plaintiff] either employed wrongful means or acted for the sole purpose of inflicting intentional harm on [defendants]” (*Ray v Stockton*, 162 AD3d 1677, 1679 [4th Dept 2018]). To state a cause of action, Defendants must show more culpable conduct on Plaintiff’s part than that for a claim of interference with contract rights (*NBT Bancorp Inc. v Fleet/Norstar Financial Group, Inc.*, 87 NY2d 614, 621 [1996]). Defendants fail to do so here. Also, Defendants

do not sufficiently allege that they would have entered into another contract or some other business advantage “but for [plaintiff]’s interference” (*Gebbia v Toronto-Dominion Bank*, 306 AD2d 37, 38 [1st Dept 2003]). Thus, Defendants do not adequately set forth facts in their affirmations to support a claim for tortious interference with economic relations.

As to the third counterclaim, “[t]ortious interference with contract requires the existence of a valid contract between [defendants] and a third party, [plaintiff]’s knowledge of that contract, [plaintiff]’s intentional procurement of the third party’s breach of the contract without justification, actual breach of the contract, and damages resulting therefrom” (*Lama Holding Co. v Smith Barney Inc.*, 88 NY2d 413, 424 [1996]). Defendants do not sufficiently plead breach of an underlying contract with a third party, which is a critical element of claim for tortious interference with contract (*Empire State Bldg. Associates v Trump*, 247 AD2d 214 [1st Dept 1998]). Indeed, Defendants allege only interference with their application for a liquor license, which is a government permit, not a contract. As such, Defendants do not adequately state a claim for tortious interference with contractual relations.

With respect to the fourth counterclaim, intentional infliction of emotional distress as to Defendant Haytham Ahmed, Defendants do not sufficiently allege that Plaintiff engaged in extreme and outrageous conduct (*Schnur v Balestriere*, 208 AD3d 1117, 1118 [1st Dept 2022]). To state a cause of action for intentional infliction of emotional distress, Defendants must allege conduct that is “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community” (*164 Mulberry St. Corp. v Columbia Univ.*, 4 AD3d 49, 56 [1st Dept 2004]). Here, Defendants do not adequately set forth any facts in support of this counterclaim.

As to the fifth counterclaim, “conversion takes place when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person’s right of possession” (*Colavito v New York Organ Donor Network, Inc.*, 8 NY3d 43, 49-50 [2006]). The elements of conversion are “(1) [defendants]’ possessory right or interest in the property and (2) [plaintiff]’s dominion over the property or interference with it, in derogation of [defendants]’ rights” (*Core Development Group LLC v Spaho*, 199 AD3d 447, 448 [1st Dept 2021]). Even where “possession of the property is originally lawful, a conversion occurs when the defendant refuses to return the property after a demand” (*id.*). Further, “conversion is concerned with the superior right of possession of such property, not title ownership” (*id.*). An action for conversion requires a demand for the property and refusal of same; thus, allegations in the Answer with Counterclaims must convey Defendants’ exclusive claim of ownership of the property and Plaintiff’s intent to interfere with Defendants’ possession or use of that property (*see Feld v Feld*, 279 AD2d 393, 394-395 [1st Dept 2001]). Here, Defendants’ affirmations do not contain facts that adequately show at the pleading stage that Plaintiff took possession of Defendant Saleh Saleh’s personal property. Further, they do not show that Defendants demanded any such property or that Plaintiff refused to comply. Accordingly, Defendants do not adequately state a claim for conversion.

Based on the foregoing, Defendants have not submitted proof of the facts constituting the Counterclaims (*see* CPLR § 3215[f]). Here, the Amended Answer is verified by Defendants’ counsel. Where the amended answer with counterclaims is not verified by a person with personal knowledge, as is the case here, Defendants may submit affirmations to supplement their pleading.

However, Defendants’ proof here does not establish “the prima facie validity of the uncontested cause[s] of action” (*Petty v Law Off. of Robert P. Santoriella, P.C.*, 200 AD3d 621, 621 [1st Dept 2021]). Therefore, Defendants’ Cross-Motion is denied in its entirety. The Court has considered the parties’ additional arguments, even if not specifically addressed, and finds them unpersuasive.

The papers filed by Defendants in support of their motion are insufficient to support entry of a default judgment pursuant to CPLR § 3215[f]. However, under the circumstances presented— in which Defendants lack the requisite affidavit or verified complaint to support their motion— Defendants are granted leave to reapply for a default judgment, on proper papers, within 14 days of the date of this order (*231st Riverdale LLC v. 7 Star Home Furniture Inc.*, 198 AD3d 524, 525 [1st Dept 2021]; *Brown v. Rosedale Nurseries, Inc.*, 259 AD2d 256, 257 [1st Dept 1999]).

Accordingly, it is hereby

ORDERED that the Court dismisses Plaintiff’s Complaint, and each of the claims asserted therein, with prejudice; and it is further

ORDERED that Plaintiff’s Motion for Default Judgment against Defendant Saleh Saleh is denied with prejudice; and it is further

ORDERED that Defendants’ Cross-Motion for Default Judgment against Plaintiff is denied with leave to renew on or before October 8, 2025; and it is further

ORDERED that failure to renew their Cross-Motion and/or file a letter on NYSCEF with the Court advising as to how Defendants seek to proceed in this action on or before October 8, 2025 will result in dismissal of Defendants’ Counterclaims; and it is further

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

The foregoing constitutes the Decision and Order of the Court.

September 24, 2025

DATE



ANAR RATHOD PATEL, A.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