

Midland Credit Mgt., Inc. v Pearsall

2025 NY Slip Op 34105(U)

October 24, 2025

Supreme Court, New York County

Docket Number: Index No. 160131/2024

Judge: Phaedra F. Perry-Bond

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

PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35

Justice

-----X INDEX NO. 160131/2024

MIDLAND CREDIT MANAGEMENT, Inc.,

MOTION DATE 1/22/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

TAMAIKA D PEARSALL

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF Document Nos. (Motion 001) 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 for DEFAULT JUDGMENT.

Upon the foregoing documents plaintiff's motion for default judgment pursuant to CPLR § 3215 is **granted** as against defendant Tamaika D. Pearsall (Defendant).

Procedural History

Midland Credit Management Inc. (Plaintiff) moves pursuant to CPLR § 3215 for default judgment against Defendant, based on her failure to appear or answer the complaint. The complaint arises from a credit agreement that defendant entered into with plaintiff's predecessor in interest, Citibank, N.A. (Original Creditor). Plaintiff alleges that defendant breached the credit agreement, the Original Creditor charged off the account, and that plaintiff purchased the account from the Original Creditor. Plaintiff claims that there is \$6,868.44 due and owing from defendant based upon the terms of the credit agreement.

Defendant opposes the motion on the basis that she was unable to make payment on the credit agreement. Specifically, she argues that she is currently unemployed and was unable to make payments on the credit agreement due to a prior divorce. She further argues that she was unaware that the debt survived her divorce, and that the responsibility for the outstanding debt should be reduced in accordance with the stipulations relating to her divorce.

Discussion

Under CPLR § 3215 (f), a motion for default judgment must be supported by: (1) proof of service of the summons and complaint; (2) proof of the default; and (3) proof of the facts constituting the claim (See *Joosten v Gale*, 129 AD2d 531, 534 [1st Dept 1987]; *231st Riverdale*

LLC v 7 Star Home Furniture Inc., 198 AD3d 524, 525 [1st Dept 2021]; *Beltre v Babu*, 32 AD3d 722, 723–24 [1st Dept 2006]).

Further, as the underlying action arises from consumer credit transactions and plaintiff is not the original creditor, CPLR § 3215 (f) creates additional requirements for a default judgment.

“In an action arising out of a consumer credit transaction, if the plaintiff is not the original creditor, the applicant shall include: (1) an affidavit by the original creditor of the facts constituting the debt, the default in payment, the sale or assignment of the debt, and the amount due at the time of sale or assignment; (2) for each subsequent assignment or sale of the debt to another entity, an affidavit of sale of the debt by the debt seller, completed by the seller or assignor; and (3) an affidavit of a witness of the plaintiff, which includes a chain of title of the debt, completed by the plaintiff or plaintiff’s witness.”

(CPLR § 3215 (f))

Further, as plaintiff seeks a default judgment based upon nonappearance against a natural person based upon nonpayment of a credit agreement, CPLR § 3215 (g) (3) (i) requires:

“When a default judgment based upon nonappearance is sought against a natural person in an action based upon nonpayment of a contractual obligation an affidavit shall be submitted that additional notice has been given by or on behalf of the plaintiff at least twenty days before the entry of such judgment, by mailing a copy of the summons by first-class mail to the defendant at his place of residence in an envelope bearing the legend “personal and confidential” and not indicating on the outside of the envelope that the communication is from an attorney or concerns an alleged debt. In the event such mailing is returned as undeliverable by the post office before the entry of a default judgment, or if the place of residence of the defendant is unknown, a copy of the summons shall then be mailed in the same manner to the defendant at the defendant’s place of employment if known; if neither the place of residence nor the place of employment of the defendant is known, then the mailing shall be to the defendant at his last known residence.”

In addition, 22 NYCRR § 202.27-b requires additional notice in actions arising from consumer credit transitions. “No default judgment based on defendant’s failure to answer shall be entered unless there has been compliance with this subdivision and at least 20 days have elapsed from the date of mailing by the clerk.” (22 NYCRR § 202.27-b (a) (2)).

Here, plaintiff has met all of the requirements for entry of a default judgment pursuant to CPLR § 3215. Plaintiff submits an affidavit of service (NYSCEF Doc No. 10) indicating that service was effected upon the defendant on November 19, 2024 pursuant to CPLR § 308 (4) by affixing a copy of the summons and complaint on defendant’s address and mailing a copy of the pleadings to said address. The affiant further indicates that service was effected pursuant to CPLR § 308 (4) after three prior attempts at personal service at said address. In addition, plaintiff submits

proof of compliance with CPLR § 3215 (g) (3) (i) (NYSCEF Doc No. 11) and 22 NYCRR § 202.27-b (NYSCEF Doc No. 5)

In addition, plaintiff has complied with CPLR § 3215 (f) by providing an affidavit by the original creditor of the facts constituting the debt, the default in payment, the sale or assignment of the debt, and the amount due at the time of sale or assignment (NYSCEF Doc No. 15); an affidavit of sale of the debt by the debt seller, completed by the seller or assignor (NYSCEF Doc No. 15); and an affirmation of a witness of the plaintiff, which includes a chain of title of the debt, completed by the plaintiff or plaintiff's witness (NYSCEF Doc No. 14) (*see Liberty Mut. Ins. Co. v Five Boro Med. Equip., Inc.*, 130 AD3d 465 [1st Dept 2015][affirmation of counsel as to facts made "under penalty of perjury" sufficient]). Plaintiff has also submitted proof of defendant's non-military status in compliance with the Servicemembers Civil Relief Act (NYSCEF Doc No. 12).

Plaintiff further submits that defendant has not appeared, answered, nor otherwise responded in the underlying action. Plaintiff supports its claim by attorney affirmation, a copy of the summons and complaint, and copies of account statements showing defendant's outstanding balance on the credit agreement (NYSCEF Doc No. 8, 9).

Defendant does not argue in her opposition papers that the pleadings were not properly served upon her. In point of fact, her address as indicated on her affirmation in opposition (NYSCEF Doc No. 12) is the same address indicated on all of plaintiff's affidavits of service and required additional notices. Further, defendant's argument that she was unable to make the required payment on the credit account due to her divorce, refers specifically to her inability to make payments to the Original Creditor while the credit agreement was still active. This in no way speaks to her ability to answer the complaint or otherwise join issue in the underlying action, which was commenced on or about November 19, 2024.

In addition, defendant acknowledges that she entered into the credit agreement and defaulted in the required payments. Further, she has not attached a copy of any "stipulations of divorce" (defendant's affirmation in opposition, NYSCEF Doc No. 21) relating to the credit agreement nor any proof that she is only partially liable for the alleged debt.

Defendant's remaining arguments are insufficient to warrant denying plaintiff's motion for a default judgment as defendant's alleged financial hardship and inability to pay are not a defense (*see e.g. Citizens Bank, N.A. v Silverman*, 2024 NY Slip Op 51331[U][Sup Ct, Kings County 2024][“Acknowledging a debt but not being able to pay it is a legally insufficient excuse and does not constitute a defense to awarding summary judgment to a lender.”]).

Plaintiff's motion is therefore **granted in this matter.**

Accordingly, it is hereby

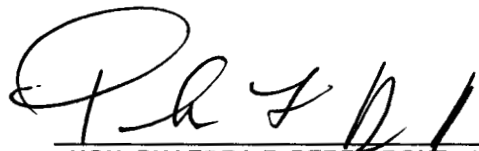
ORDERED that plaintiff's motion for default judgment against defendant Tamaika D. Pearsall is **granted**; and it is further

ORDERED that, within twenty (20) days of the upload of this decision to NYSCEF, Plaintiff shall serve a copy of the same with notice of entry upon all parties.

This constitutes the decision of the Court.

10/24/2025

DATE


HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION

APPLICATION:

SETTLE ORDER

GRANTED IN PART

OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE