

Flagstar Bank, N.A. v C&E Group, Inc.

2025 NY Slip Op 34713(U)

December 4, 2025

Supreme Court, New York County

Docket Number: Index No. 650817/2025

Judge: Judy H. Kim

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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. JUDY H. KIM PART 04

Justice

-----X

FLAGSTAR BANK, N.A.,

Plaintiff,

- v -

C & E GROUP, INC.,

Defendant.

-----X

INDEX NO. 650817/2025

MOTION DATE 04/01/2025

MOTION SEQ. NO. 001

**AMENDED DECISION + ORDER
ON MOTION**

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

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

This Court’s decision and order of September 30, 2025 (NYSCEF Doc No. 20) is recalled, vacated, and replaced with the following:

Upon the foregoing documents, the motion of plaintiff Flagstar Bank, N.A. successor-in interest to Signature Bridge Bank, N.A., successor-in-interest to Signature Bank (“Signature Bank”), for a default judgment against defendant C&E Group, Inc. is granted on default and for the reasons set forth below.

FACTUAL BACKGROUND

Plaintiff commenced this action on February 11, 2025, asserting causes of action for breach of contract and unjust enrichment (NYSCEF Doc No. 1, complaint). The complaint alleges, specifically, that, on January 7, 2014, defendant opened a business checking account with Signature Bank ending in 3983 (the “Account”) (*id.* at ¶11; NYSCEF Doc No. 7, account application). In connection with the opening of the Account, defendant acknowledged that he had received and agreed to Signature Bank’s Business Bank Deposit Agreement (the “Deposit

Agreement”) (NYSCEF Doc No. 8, deposit agreement). After the opening of the Account, and pursuant to the Deposit Agreement, Signature Bank advanced funds to defendant to cover and honor returned checks when there were insufficient funds in the Account (the “Account Overdrafts”), and Signature charged defendant interest on the Account Overdrafts at the Reference Rate as agreed to in the Deposit Agreement (*id.* at 9-10). Defendant agreed, pursuant to the Deposit Agreement, that Signature Bank could demand payment of all overdrafts (plus any accrued interest) on the Account at any time (*id.*).

On March 20, 2023, pursuant to a Purchase and Assumption Agreement, plaintiff purchased certain assets and liabilities of Signature Bridge Bank, successor to now-defunct Signature Bank, and became the holder and owner of defendant’s bank account (NYSCEF Doc No. 1, complaint at ¶9). On a monthly basis, Signature Bank, and then plaintiff, provided defendant with statements evidencing the Account Overdrafts (NYSCEF Doc No. 9, account statements). By letter correspondences dated June 27, 2024, July 2, 2024, and January 30, 2025, plaintiff demanded immediate payment of the Account Overdrafts amounts (NYSCEF Doc No. 1, complaint at ¶¶19, 21). Plaintiff alleges that, despite its demands for payment, defendant failed to pay any of the outstanding Account Overdrafts on the Account, in breach of the Deposit Agreement, and that, as of and including January 23, 2025, the total amount of \$15,140.17 was due on the Account, consisting of a principal amount of \$13,437.46, and accrued interest in the amount of \$1,702.71 (*id.* at ¶¶20, 28). Plaintiff now moves for a default judgment against defendant.

DISCUSSION

Plaintiff’s motion for a default judgment is granted. In order to establish its entitlement to a default judgment pursuant to CPLR 3215 (f), the movant must submit proof of: (1) service of the summons and complaint; (2) the facts constituting the claim; and (3) the defendant’s default in

answering or appearing (*see Gordon Law Firm, P.C. v Premier DNA Corp.*, 205 AD3d 416, 416 [1st Dept 2022]). “CPLR 3215 does not contemplate that default judgments are to be rubberstamped once jurisdiction and a failure to appear has been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action” (*Feffer v Malpeso*, 210 AD2d 60, 62 [1st Dept 1994] [citation and quotation marks omitted]). “The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts” (*id.*). Where, as here, service was effected on a corporate defendant via the New York State Secretary of State pursuant to BCL § 306, plaintiff is also required, pursuant to CPLR 3215(g) (4), to establish its additional service of the summons and complaint by first class mail at this defendant’s last known address (*see Sterk-Kirch v Uptown Communications & Elec, Inc.*, 124 AD3d 413, 414 [1st Dept 2015]).

Plaintiff has satisfied these requirements. Plaintiff submits an affidavit of service documenting its service of the summons and complaint on defendant on February 11, 2025, via the New York Secretary of State (NYSCEF Doc No. 2, affidavit of service). It has also established the additional mailing of the summons and complaint on defendant on March 25, 2025, as required by CPLR 3215(g)(4) (NYSCEF Doc No. 4, affidavit of additional mailing), and that defendant, as a business entity, “is not [s]ubject to the protective provisions of the Service members Civil Relief Act” (*id.* at ¶ 2).

Plaintiff has also provided proof of the facts constituting its claims by submitting copies of the account application and the Deposit Agreement between Signature Bank and defendant, account statements setting forth the balance of the Account Overdrafts, and the affidavit of Martine Lamarre, a Manager Small Business Loan in plaintiff’s collection department, who is “charged with the administration of the account that is delinquent and the subject of this litigation”

(NYSCEF Doc No. 6, Lamarre aff at ¶6). In her affidavit, Lamarre details defendant's failure to pay the Account Overdrafts, on demand, as required by and in breach of the Deposit Agreement, and alleges that as of and including March 24, 2025, the total amount of \$15,220.68 was due on the Account, consisting of a principal amount of \$13,471.20, and accrued interest in the amount of \$1,749.48 (*id.* at ¶¶28-30). Lamarre further attests that per diem interest in the amount of \$6.25 at the Reference Rate is also due for March 25, 2025 and each day until payment is made, as well as legal fees and collection costs as permitted under the Deposit Agreement (*id.* at ¶¶ 31-32; NYSCEF Doc No. 8, agreement at 18-19). Defendant has further established its entitlement to attorney's fees under the Deposit Agreement and the amount of such fees through the affirmation of its counsel, Angel F. Espinal, Esq. (NYSCEF Doc No. 16, Espinal affirmation).

Finally, plaintiff has established defendant's default through Espinal's affirmation (NYSCEF Doc No. 11, affirmation, ¶ 8).

In light of the foregoing, it is

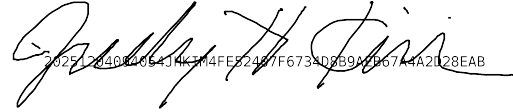
ORDERED that plaintiff Flagstar Bank, N.A.'s motion for a default judgment against defendant C&E Group, Inc. is granted; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of plaintiff Flagstar Bank, N.A. as against defendant C&E Group, Inc. in the amount of \$15,220.68 together with interest at the contractual rate from March 25, 2024, as computed by the Clerk of the Court, attorney's fees in the amount of \$2,566.15, and costs and disbursements as taxed by the Clerk of the Court upon the submission of an appropriate bill of costs; and it is further

ORDERED that plaintiff shall, within twenty days from the date of this decision and order, serve a copy of same with notice of entry upon defendant and upon the Clerk of the Court, who is directed to enter judgment accordingly; and it is further

ORDERED that such service upon the Clerk of the Court 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).

This constitutes the decision and order of the Court.



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12/4/2025

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE