

Colonial Funding Network, Inc. v Kitchen Cabinet Refacers, LLC

2025 NY Slip Op 34943(U)

December 19, 2025

Supreme Court, New York County

Docket Number: Index No. 652502/2017

Judge: Phaedra F. Perry-Bond

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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. PHAEDRA F. PERRY-BOND PART 35

Justice

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COLONIAL FUNDING NETWORK, INC., as servicing provider for EVOLUTION CAPITAL GROUP, Plaintiff,	INDEX NO. <u>652502/2017</u> MOTION DATE <u>05/22/2025</u> MOTION SEQ. NO. <u>005</u>
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- v -

KITCHEN CABINET REFACERS, LLC, d/b/a
KITCHEN CABINET REFACERS and
PAUL SCHWARTZ (a/k/a PAUL B. SCWARTZ)

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63

were read on this motion to/for

JUDGMENT - DEFAULT

Upon the foregoing documents, plaintiff, Colonial Funding Network, Inc., as servicing provider for Evolution Capital Group's motion (Motion Seq. No. 005) for default judgment pursuant to CPLR § 3215 against defendants Kitchen Cabinet Refacers, LLC d/b/a Kitchen Cabinet Refacers and Paul Schwartz a/k/a Paul B. Schwartz is **granted**.

Procedural History

This action arises out of an agreement dated November 15, 2016, made between plaintiff, Colonial Funding Network, Inc., as servicing provider for Evolution Capital Group ("Colonial") and defendants, Kitchen Cabinet Refacers, LLC. d/b/a Kitchen Cabinet Refacers ("Kitchen Cabinet Refacers"), a limited liability company existing under the laws of the state of Texas and Paul Schwartz a/k/a Paul B. Schwartz ("Schwartz"), a resident of Texas and owner and guarantor of Kitchen Cabinet Refacers (collectively "defendants"). Plaintiff commenced this action on May 8, 2017, by filing a Summons and Complaint seeking to recover damages for breach of contract. Plaintiff alleges defendants defaulted on the Merchant Cash Advance Agreement ("the agreement") (NYSCEF Doc. No. 49) when defendants stopped transferring future receivables to plaintiff as agreed upon.

Defendants appeared by counsel and interposed an answer on June 29, 2017 (NYSCEF Doc. No. 5). On November 29, 2019, defendants' counsel filed an order to show cause (NYSCEF Doc. No. 20 [Motion Seq. 003]) to withdraw as counsel. The motion was granted, and counsel was

relieved by order dated January 8, 2020 (NYSCEF Doc. No. 23). A notice of entry was filed on January 18, 2020. The affidavit of service for the notice of entry provides defendants were served by mail at the Kitchen Cabinets Refacers location; additionally, Paul Schwartz was served at an alternative address in Texas (NYSCEF Doc. No. 30). The record reflects that since defendants' counsel was relieved, defendants have not obtained new counsel or appeared.

gapursuant to CPLR § 3215 in the amount of \$50,924.00, plus costs and interest from February 8, 2017. Plaintiffs conclude that because defendants breached the contract and guaranty agreement, they are jointly and severally liable to plaintiff. Defendants have not submitted opposition to motion seq. 005 (NYSCEF Doc. No. 46).

Discussion

An application for a default judgment pursuant to CPLR § 3215 (f) requires plaintiff to provide: (1) service of the summons and complaint; (2) defendant's default; and (3) the facts constituting the claim and the amount due (*see Joosten v Gale*, 129 AD2d 531, 534 [1st Dept 1987]).

Plaintiff submits proof of filing and service on Kitchen Cabinet Refacers and Shwartz. The attached affidavit of service provides defendants were served with the Summons and Complaint on June 5, 2017, at Kitchen Cabinet Refacers located on 4901 Milwee Street Suite 208, Houston, TX 77092, by personal service to Schwartz (NYSCEF Doc. No. 53). Additionally, plaintiff submits a non-military affidavit with a copy of Schwartz's non-military status generated through the Department of Defense and Manpower Data Center (NYCEF Doc. No. 60). In addition, plaintiff submits proof of service of the motion dated May 22, 2025 (NYSCEF Doc. No. 62).

Personal service on a corporation shall be made by delivering the summons to a foreign corporation by service upon a foreign corporation's "officer, director, managing agent, general agent, cashier, assistant cashier or any other agent authorized by appointment or by law...." (CPLR 311[a][1]). Here service was made on Schwartz, the CEO and guarantor of Kitchen Cabinet Refacers, at the subject place of business. Further, section 4.5 of the agreement provides: "[a]ny suit, action or proceeding arising hereunder... shall if FUNDER so elects, be instituted in any court sitting in New York (the '[a]cceptable [f]orums')" Plaintiff demonstrates proper service of the summons and complaint.

Plaintiff also provides proof of default. In support of the motion for default judgment, the attached attorney affirmation lists a detailed procedural history including the dates of default (NYSCEF Doc. No. 48). The affirmation represents that defendants have not appeared since defendants' attorney was relieved (NYSCEF Doc. No. 48 ¶ 5-12). Pursuant to CPLR § 3215, a defendant must default in answer or in appearance (*U.S. Bank Nat'l Ass'n v 240 Park Ave. S. Owner Ltd. P'ship*, 2025 NY Slip Op 33720[U], *2 [Sup. Ct, NY County]). The record reflects that

although defendants appeared on prior court dates, defendants have defaulted on more recent court appearances, including the appearance for the instant motion (NYSCEF Doc Nos. 23, 29, 31, 45).

An application for a default judgment must also be supported by “proof by affidavit made by the party of the facts constituting the claim...” (see *Joosten v Gale*, 129 AD2d 531, 534 [1st Dept 1987]). To establish a claim for breach of contract, the proof must establish: (1) the existence of a contract; (2) the performance required under the contract; (3) the breach of the contract; and (4) damages (*Harris v Seward Park Hous. Corp*, 79 AD3d, 425, 426 [1st Dept 2010]).

Here, plaintiff submits a copy of the contract and an affidavit (NYSCEF Doc. Nos. 47, 49) from David Wolfson (Wolfson), Vice President of Risk Management and Asset Recovery for plaintiff. Wolfson states that plaintiff made a purchase of Kitchen Cabinets Refacer’s future accounts, monetary payments and other general receivables for \$63,900.00; that plaintiff paid defendants \$45,000.00 as the agreed purchase price; and that plaintiff was to collect 15 % of the daily batch amount of the receivables collected by defendants’ ACH deposit account (NYSCEF Doc. No. 47 ¶ 7-9;). Plaintiff provides that a primary condition of the transaction was that defendants agreed to use a single, specified deposit account where all the receivables were collected by Kitchen Cabinet Refacers. The account would be fully accessible to plaintiff (*Id.*, ¶ 10). Plaintiff provides sufficient documentation to show the existence of the contract and the performance required pursuant to the contract.

Further, Wolfson states that contrary to the agreement, defendants stopped depositing all its receivables to the shared account as of February 8, 2017, and closed the account without plaintiff’s permission, which is a direct violation of the agreement. Plaintiff was not able to collect its daily percentage of the receivables (*Id.*, ¶ 13-15). The affidavit states that payment demands were made and the last demand letter was sent on April 10, 2017 (NYSCEF Doc. No. 50). The demand states the sum due, provides that defendants are in default, and gives defendants time to cure the default. Additionally, the attached merchant statement (NYSCEF Doc. No. 51) lists the charges on the account, including returned ACH debit fees and provides an accounting for the open balance.

Moreover, plaintiff states defendants delivered \$18,221.00 of the \$63,900.00 purchased receivables (NYSCEF Doc. No. 47 ¶ 25). Plaintiff asserts that defendants are additionally liable for a \$5,000 default fee pursuant to the agreement, as well as \$245.00 in returned ACH debit fees (*Id.*, 25, 27-28). Plaintiff adds that neither Kitchen Cabinets Refacers, nor Schwartz, as the guarantor of the agreement has fulfilled the payment obligation (*Id.*, ¶ 21, 26). Wolfson’s affidavit and attached merchant statement sufficiently provide facts to support plaintiffs claim that defendants failed to pay according to the agreement and the amount in damages it caused plaintiffs. Plaintiff satisfies the elements for breach of contract.

The guaranty agreement signed by Paul B. Schwartz states “[t]he undersigned guarantor(s) hereby guarantees the [funder]...[g]uarantor’s obligations are due (i) at the time any breach by

Merchant of any representation, warranty, or covenants made by [m]erchant in this [a]greement...” (NYSCEF Doc. No.49, p. 15). [A] guaranty is to be interpreted in the strictest manner” (Mesquite Cr. Wind LLC v Mars Wind, Inc., 213 AD3d 529, 529 [1st Dept 2023], quoting White Rose Food v Saleh, 99 NY2d 589, 591 [2003]) ([internal quotation marks and citation omitted]). A guaranty that is “...clear and unambiguous on its face and, by its language, absolute and unconditional, the signer is conclusively bound by its terms absent a showing of fraud, duress or other wrongful act in its inducement” (Citibank NA v Uri Schwartz & Sons Diamonds Ltd., 97 AD3d 444, 446-447 [1st Dept 2012], quoting National Westminster Bank USA v Sardi’s Inc. 174 AD2d 470, 471 [1991]). Here, the language in the guaranty is unambiguous and clearly holds the guarantor liable for breach of covenants of the merchant. Plaintiff sufficiently demonstrates its entitlement to a default judgment pursuant to CPLR § 3215 for breach of contract as against all defendants.

According, it is hereby

ORDERED that plaintiff Colonial Funding Network, Inc., as servicing provider for Evolution Capital Group’s motion (Motion Seq. No. 005) for default judgment pursuant to CPLR § 3215 against defendants Kitchen Cabinet Refacers, LLC d/b/a Kitchen Cabinet Refacers and Paul Schwartz a/k/a Paul B. Schwartz is **granted**; and it is further

ORDERED that the Clerk is directed to enter a judgment in favor of the plaintiff and against defendants in the amount of \$50,924.00, together with statutory interest from February 8, 2017, plus costs and disbursements

ORDERED that within twenty (20) days of the upload of this Decision and Order to NYSCEF, plaintiff shall serve a copy with notice of entry upon defendants; and it is further

This constitutes the decision of the Court.

12/19/2025
DATE



PHAEDRA F. PERRY-BOND, 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