

Santander Consumer USA, Inc. v Godoy
2025 NY Slip Op 35339(U)
February 24, 2025
Supreme Court, Suffolk County
Docket Number: Index No. 606773/2024
Judge: Maureen T. Liccione
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

Short Form Order

Index No. 606773/2024

SUPREME COURT – STATE OF NEW YORK
PART 78 – SUFFOLK COUNTY

P R E S E N T:

Hon. Maureen T. Liccione

Justice Supreme Court

-----x
SANTANDER CONSUMER USA, INC., d/b/a
CHRYSLER CAPITAL,

Plaintiff,

-against-

GILMA GODOY,

Defendant.
-----x

**DECISION, ORDER, AND
JUDGMENT**

Mot. Seq. No. 002 – MG/CaseDisp
Orig. Return Date: 11/20/2024
Mot. Submit Date: 11/20/2024

PLAINTIFF’S ATTORNEY

LAW OFFICE OF
DAVID B. CETRON, PC
49 W. 37th Street, 7th Fl
New York, NY 10018

DEFENDANT’S ATTORNEY

ANADEL CANALE, PC
1805 5th Avenue, Suite 1
Bay Shore, NY 11706

Upon the e-filed documents numbered 7 through 24 and due deliberation, it is determined as follows:

ORDERED that plaintiff’s motion for default judgment against the defendant for possession of the motor vehicle identified as the 2018 Jeep Wrangler, bearing VIN # 1C4HJXFG1JW258359, is hereby granted in its entirety; and it is further

ORDERED and ADJUDGED that plaintiff is vested with a valid security/lien interest in the 2018 Jeep Wrangler, bearing VIN # 1C4HJXFG1JW258359; and it is further

ORDERED and ADJUDGED that the plaintiff Santander Consumer USA LLC, d/b/a Chrystal Capital recover from the defendant Gilma Godoy, of 39 Lurcott Lane, Central Islip, New York 11722, the possession of the chattel described as one 2018 Jeep Wrangler, bearing VIN # 1C4HJXFG1JW258359, and alternatively, if the chattel is not returned to the plaintiff, that the plaintiff recover from the defendant the amount of \$41,104.74, with statutory interest from June 23, 2023, and that the plaintiff have execution for enforcement of this judgment; and it is further

Santander Consumer USA, Inc v Godoy

Index No. 606773/2024

ORDERED that plaintiff shall serve a copy of this decision, order, and judgment with notice of entry, upon the County Clerk.

Plaintiff commenced this action by the filing of a summons and verified complaint on March 15, 2024 alleging “breach of contract/replevin” (NYSCEF Doc No. 1). The complaint alleges that plaintiff failed to make monthly payments as required by the retail instalment contract executed by plaintiff on September 25, 2021 for the purchase of a 2018 Jeep Wrangler (Retail Instalment Contract). Plaintiff served the summons and verified complaint with exhibits on defendant pursuant to CPLR 308 (2) on March 19, 2024. The affidavit of service was filed on March 22, 2024. On May 9, 2024, additional service of the summons was made by first class mail pursuant to CPLR 3215 (g) (3) (i) and (ii). Defendant’s time to answer expired on May 1, 2024 (CPLR 3012 [c]).

On May 9, 2024, pursuant to CPLR 3215, plaintiff moved for default judgment awarding plaintiff possession of the specific chattel identified in the verified complaint and directing delivery of the chattel to plaintiff pursuant to the Retail Instalment Contract, UCC § 9-609 (c) and CPLR 7109 (b), and authorizing enforcement and recovery under CPLR 5102 and 7110. Defendant did not file an opposition to the motion, but filed on May 20, 2024, his answer. On June 3, 2024, plaintiff filed a notice of rejection rejecting defendant’s answer as untimely.

On September 19, 2024, this Court denied plaintiff’s unopposed motion for failure to allege enough facts to enable this Court to determine that a viable cause of action exists. Specifically, the Court noted that the plaintiff did not provide an affidavit and did not submit any evidence about the assignment of the Retail Instalment Contract from Security Dodge Chrysler Jeep Ram to plaintiff.

Plaintiff now moves for a second time for a motion for default judgment against the defendant awarding possession of the 2018 Jeep Wrangler to plaintiff and directing delivery of the chattel to plaintiff pursuant to the Retail Instalment Contract, UCC § 9-609 (c) and CPLR 7109 (b) and authorizing enforcement and recovery under CPLR 5102 and 7110. In support of its motion, plaintiff provides the Retail Instalment Contract, a verification affidavit executed by Felicia Jaimes, the Assistant Vice President, Legal Servicing with Santander Consumer USA, Inc., d/b/a Chrysler Capital, a letter from plaintiff to defendant dated December 3, 2021 noting that plaintiff was servicing the account. Defendant did not oppose the motion.

Santander Consumer USA, Inc v Godoy

Index No. 606773/2024

Defendant's Untimely Answer

“To extend the time to answer the complaint and to compel the plaintiff to accept an untimely answer as timely, a defendant must provide a reasonable excuse for the delay and demonstrate a potentially meritorious defense to the action” (*Wilmington Tr., Natl. Assn. v Ashe*, 189 AD3d 1130, 1131 [2d Dept 2020]; *Mannino Dev., Inc. v Linares*, 117 AD3d 995, 995 [2d Dept 2014]; *see* CPLR 3012 [d]). “Whether there is a reasonable excuse for a default is a discretionary, sui generis determination to be made by the court based on all relevant factors, including the extent of the delay, whether there has been prejudice to the opposing party, whether there has been willfulness, and the strong public policy in favor of resolving cases on the merits” (*Kim v Strippoli*, 144 AD3d 982, 983 [2d Dept 2016]; *Harcztark v Drive Variety, Inc.*, 21 AD3d 876 [2d Dept 2005]).

Although defendant filed her answer only twenty (20) days late, defendant did not oppose the motion for default judgement and as such did not provide a reasonable excuse for the delay and did not demonstrate a potentially meritorious defense to the action. Furthermore, defendant has not cross moved pursuant to CPLR 3012 [d] to extend the time to answer or to compel the acceptance of the answer that was untimely served. As such, defendant's answer was untimely and the Court will consider plaintiff's motion for default judgment against defendant.

Default Judgment – Replevin

According to CPLR 3215 (a), “[w]hen a defendant has failed to appear, plead or proceed to trial on an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed, the plaintiff may seek a default judgment against him.” On a motion for leave to enter judgment against a defendant for failure to answer or appear, a plaintiff must submit proof of service of the summons and complaint upon the defaulting defendant, proof of the facts constituting plaintiff's claim, and proof of the defendant's default (*Gray v Doyle*, 170 AD3d 969, 970 [2d Dept 2019]; CPLR 3215 [f]; *Triangle Properties 2, LLC v Narang*, 73 AD3d 1030, 1032 [2d Dept 2010]).

As to the second requirement, proof of the claim itself, a plaintiff must allege enough facts to enable the court to determine that a viable cause of action exists (*Roy v 81E98th KH Gym, LLC*, 142 AD3d 985, 985 [2d Dept 2016]; *Triangle Properties 2*, 73 AD3d at 1032). Proof that the plaintiff has submitted enough facts may be established by an affidavit of a party or someone with knowledge or by a complaint verified by the plaintiff that sufficiently details the facts and the basis

Santander Consumer USA, Inc v Godoy

Index No. 606773/2024

for the defendant's liability (*see Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]; *Gray*, 170 AD3d at 971; *Michael v Atlas Restoration Corp.*, 159 AD3d 980, 982 [2d Dept 2018]; *Jacobsen v S & F Serv. Ctr. Co.*, 131 AD3d 450, 451 [2d Dept 2015]).

Here, plaintiff provided proof of service of the summons and complaint upon defendant pursuant to CPLR 308 (2) and compliance with the additional service requirements of CPLR 3215 (g) (3) (i) and (ii). Defendant's time to answer or move with respect to the summons and complaint expired on May 1, 2024 and defendant's answer dated May 20, 2024 was untimely as discussed above. Plaintiff also allege enough facts in its verified complaint and supporting documents to enable this Court to determine that viable cause of action exists for replevin.

"The action of replevin is essentially possessory in its nature" (*Melrose Credit Union v Matatov*, 187 AD3d 1009, 1012 [2020] [internal quotation omitted]). "A cause of action sounding in replevin must establish that the defendant is in possession of certain property of which the plaintiff claims to have a superior right" (*Westbury Recycling, Inc. v Westbury Transfer & Recycling, LLC*, 209 AD3d 929, 932 [2d Dept 2022] [internal quotation omitted]; *Melrose Credit Union v Matatov*, 187 AD3d at 1012; *Batsidis v Batsidis*, 9 AD3d 342, 343 [2d Dept 2004]).

The Retail Instalment Contract clearly states that the plaintiff retains a security interest in the vehicle, and that in the event of the defendant's default, the plaintiff has the right to take the vehicle. Plaintiff also provided a Title of Lien Status Report from the New York State Department of Motor Vehicles showing that Chrysler Capital has a lien on the vehicle. In its verified complaint, plaintiff alleged that the defendant was in default under the terms of the Retail Instalment Contract and that the defendant is in possession of the vehicle. Thus, the plaintiff has established its superior right to the vehicle pursuant to the terms of the Retail Instalment Contract.

Furthermore, the verified complaint specifies that the Retail Instalment Contract was assigned to plaintiff for value prior to maturity, and Ms. Jaimes provided a Verification Affidavit with the motion papers indicating that the contents of the Verified Complaint "are true to [her] knowledge except as to those matters stated to be alleged upon information and belief, and as to those matters, [she] believes them to be true" (NYSCEF Doc no. 21).

In light of the foregoing, plaintiff has established its entitlement to a default judgment on its replevin action.

Pursuant to CPLR 7108 (c), in addition to the judgment of possession granted to plaintiff, an alternative monetary award of the amount of plaintiff's interest in the chattel must also be set

Santander Consumer USA, Inc v Godoy

Index No. 606773/2024

forth herein. Although this amount is generally determined by the value of the chattel in question, under the circumstances here--in which the chattel is sought "for the retention of a security for an outstanding debt"--the appropriate alternative monetary award is based on the amount of that outstanding debt which has been established as \$41,104.74 (*see Ferrari Fin. Services, Inc. v Freidman*, 2019 NY Slip Op 30402[U], 2-3 [Sup Ct, New York County 2019]).

Plaintiff has not established that it is entitled to an order pursuant to CPLR 7109 (b) which provides that where the subject chattel is unique the court may, in addition to granting judgment under CPLR 7108, direct that a party in possession deliver the chattel to the party entitled to possession. There was no showing that the subject mass produced 2018 Jeep Wrangler was a unique chattel (*see Prozeralik v Johnston*, 182 AD2d 1108, 1108 [1st Dept 1992]; *John Paul Mitchell Systems v Quality King Distrib., Inc.*, 106 F Supp 2d 462, 477-78 [SD NY 2000] [discussing uniqueness requirement and holding that mass-produced items cannot be unique]).

The foregoing constitutes the decision, order, and judgment of the Court.

ENTER

DATE: February 24, 2025
Riverhead, NY


HON. MAUREEN T. LICCIONE, J.S.C.

FINAL DISPOSITION

NON-FINAL DISPOSITION