

Pinnacle Bus. Funding, LLC v Highland CI, Inc
2025 NY Slip Op 35436(U)
January 21, 2025
Supreme Court, Nassau County
Docket Number: Index No. 610929/2024
Judge: Francis Ricigliano
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU - IAS PART 23

Present: HON. FRANCIS RICIGLIANO
Justice of the Supreme Court

-----X
PINNACLE BUSINESS FUNDING, LLC,

Plaintiff,

-against-

HIGHLAND CI, INC, and SHOAIB N. KHAN,

Defendants.
-----X

DECISION & ORDER

INDEX NO.: 610929/2024

Motion Seq. 1

The following e-filed documents were reviewed in consideration of this motion:

Notice of Motion, Affirmations, Exhibits, etc. 5 - 14.

By Notice of Motion, plaintiff PINNACLE BUSINESS FUNDING, LLC, moves for an Order directing entry of a default judgment against defendants HIGHLANDS CI, INC., and SHOAIB N. KHAN.

This action was commenced with the filing of a Summons and Complaint on June 21, 2024. The Complaint alleges plaintiff and defendant HIGHLANDS CI, INC., entered into a written agreement for the purchase and sale of future merchant receivables, whereby the defendant agreed to sell \$22,485.00 in future merchant receivables to plaintiff for the up-front sum of \$15,000. The future receivables were to be paid to the plaintiff in a fixed amount from the business defendant's daily revenue, and the agreement allowed for the reconciliation of the predetermined remittance amount if the receivables were not as expected. Defendant SHOAIB N. KHAN executed the agreement as owner of HIGHLANDS CI, INC., as well as a personal guarantee of performance. Plaintiff further alleges the defendants delivered to plaintiff receivables totaling, after applicable fees, the sum of \$0.00, and that they thus defaulted under the agreement on or about May 30, 2024, leaving a balance due of \$22,485.00. Plaintiff seeks judgment in the amount of \$31,051.25, inclusive of the balance

due, a \$2,500.00 default fee, \$250.00 in returned item fees, \$5,621.25 in liquidated damages, and \$195.00 to cover plaintiff's cost of filing a UCC-1, plus costs and disbursements. Plaintiff has elected to waive attorney's fees for the purposes of the motion.

In order to obtain a default judgment based upon a defendant's failure to answer a Complaint or otherwise appear in an action pursuant to CPLR 3215, a movant is required to file proof of service of the Summons and Complaint, proof of the other party's default, and proof of the facts constituting the claim. *Global Liberty Ins. Co. v. Haar Orthopaedics & Sports Med., PC.*, 170 AD3d 1125, 1126 (2d Dept 2019).

In this action, plaintiff has submitted an Affirmation of Service that indicates each defendant was served with the Summons and Complaint by certified mail and first-class mail as provided for in their agreement. In addition, plaintiff has submitted an affirmation that an additional mailing was made upon defendant SHOAIB N. KHAN, as required by CPLR 3215 (g) (3) prior to entering a default judgment against a natural person. Having been duly served with the Summons and Complaint, each of the defendants have failed to answer the Complaint or otherwise appear in this action.

In regard to the requirement that the movant submit proof of the defendants' default, plaintiff has submitted proof of the defendants' default in answering via an Affirmation in Support by their attorney.

In regard to the requirement that the movant submit sufficient proof of the facts constituting the claim, the Court finds plaintiff has satisfied that requirement via their submission of a copy of the Complaint, which was verified by the plaintiff, an affidavit executed by Ari Bregin, a principal of PINNACLE BUSINESS FUNDING, LLC, and a copy of the agreement between the parties. See *Dee v. Rakower*, 112 AD3d 204, 208-209 (2d Dept 2013)(Holding that in order to establish a claim for breach of contract, a party must demonstrate the existence of a contract, the party's obligation to perform, the breach of the contractual obligation, and damages resulting from the breach); *North Fork Bank Corp. v. Graphic Forms Assoc., Inc.*, 36 AD3d 676, 676 (2d Dept 2007)(Holding that in order to establish a claim for breach of guaranty, the moving party must submit proof of the underlying agreement and signed guaranty, along with proof of the opposing party's default).

Having failed to appear or otherwise answer the allegations set forth in the Verified Complaint, the defaulting defendant is "deemed to have admitted the factual allegations set forth in the Complaint and all reasonable inferences that flow from them." *Woodson v. Mendon Leasing Corp.*, 100 NY2d 62 (2003).

However, to the extent plaintiff seeks to recover \$5,621.25 in liquidated damages, the Court finds the same is an unenforceable penalty as the amount of plaintiff's actual loss, i.e., the amount due and owed under the parties' agreement, is clearly capable of precise estimation. See *Truck Rent-A-Center, Inc., v. Puritan Farms 2nd, Inc.*, 41 NY2s 420 (1977) (holding that a contractual providing fixing damages in the event of a breach will only be sustained when the amount of damages bears a reasonable proportion to the probable loss and the amount of actual loss is incapable or difficult of precise estimation); see also *Equitable Lumber Corp. v. IPA Land Dev. Corp.*, 38 NY2d 516 (1976) (holding that if the amount fixed is plainly disproportionate to the probable loss, the provision calls for a penalty and should not be enforced).

Finally, it is also clear that plaintiff has made the motion for a default judgment within one year of the default, as required by CPLR 3215 (a).

Accordingly, it is hereby

ORDERED, that plaintiff's unopposed motion for a default judgment against defendants HIGHLANDS CI, INC., and SHOAB N. KHAN is GRANTED to the extent plaintiff is awarded a judgment in the amount of \$25,430.00, plus interest from May 30, 2024, costs and disbursements; and it is further

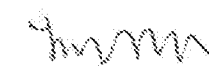
ORDERED, that plaintiff shall submit to the Judgment Clerk a proposed judgment of \$25,430.00, plus interest from May 30, 2024, costs and disbursements; and it is further

ORDERED, that plaintiff shall serve a copy of this Decision and Order with Notice of Entry upon the defendants by certified mail, return receipt requested, and by regular mail, within ten (10) days of the date of entry of this Order, and shall file proof thereof.

This constitutes the Decision and Order of this Court. Any and all relief not specifically addressed herein is denied.

Dated: January 21, 2025

ENTER:



HON. FRANCIS RICIGLIANO, J.S.C.

ENTERED

Jan 27 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE