

North Mill Credit Trust v Preferred Motors Inc.
2025 NY Slip Op 35504(U)
February 26, 2025
Supreme Court, Nassau County
Docket Number: Index No. 612220/2024
Judge: Conrad D. Singer
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

P R E S E N T: HON. CONRAD D. SINGER,

Justice

TRIAL PART: 18

-----X
NORTH MILL CREDIT TRUST,

Plaintiff,

Index No.: 612220/2024

Motion Seq. No.: 001

Motion Submitted: 11/27/2024

-against-

DECISION AND ORDER ON
MOTION

PREFERRED MOTORS INC. and KYLE STEVEN
ROBERTS,

Defendants.

----- X
The following papers were read on this motion:

Notice of Motion for Default Judgment and Supporting Papers [Seq. 001].....X

Upon the foregoing e-filed papers, the unopposed motion filed by the Plaintiff, NORTH MILL CREDIT TRUST ["Plaintiff"], for an Order pursuant to CPLR § 3215 granting it default judgment in favor of the Plaintiff and against Defendant PREFERRED MOTORS INC. ["Preferred Motors"], and pursuant to CPLR 7102 granting an Order of seizure with respect to the equipment described in Plaintiff's application, is determined as follows:

The Plaintiff commenced the instant action alleging that Defendants, Preferred Motors and Kyle Steven Roberts ["Roberts"], breached a commercial security agreement and personal guaranty, and that the Plaintiff has been damaged by such breach in the sum of \$118,279.23, plus interest thereon calculated at the rate of one and one-half percent (1.5%) per month from January 12, 2024, plus a termination fee of \$375.00, plus late fees in the sum of \$985.92, plus attorneys' fees totaling \$2,800.00, together with costs and disbursements thereon.

Initially the Plaintiff moved for default judgment against both Defendants. However, pursuant to the Notice of Withdrawal of Motion e-filed as NYSCEF Doc. No. 17, Plaintiff withdraws its motion only against Defendant Roberts, due to Roberts filing for bankruptcy.

In support of Plaintiff's default motion as against Defendant Preferred Motors, Plaintiff submits a copy of the Summons and Complaint and a copy of the parties' underlying Commercial Security Agreement ["Agreement"], as well as Personal Guaranty, which the Defendants are alleged to have breached. The Plaintiff also submits payment history evidencing the Defendants' failure to pay as required under the parties' Agreement. The Plaintiff's business documents are admissible through the affidavit of Adam P. Cronin, Plaintiff's employee, whose affidavit also provides proof of the facts constituting the Plaintiff's claims against Preferred Motors. (CPLR 3215[f]). Plaintiff provides proof that the Defendant was served with the Summons and Complaint, and provides an attorney affirmation proving Preferred Motors' default in this matter. (CPLR 3215[f]). The Plaintiff has further provided proof of additional notice pursuant to CPLR 3215(g).

In addition to seeking default against Preferred Motors in the sum of \$118,279.23, plus interest thereon calculated at the rate of one and one-half percent (1.5%) per month from January 12, 2024, plus a termination fee of \$375.00, plus late fees in the sum of \$985.92, plus insufficient funds fees in the sum of \$150.00, plus all attorneys' fees totaling \$2,800.00, together with costs and disbursements thereon, the Plaintiff also seeks an Order pursuant to CPLR 7102 granting an order of seizure with respect to the equipment described in the Plaintiff's motion, to wit: one (1) Dell R750 Poweredge Server bearing serial number 2WPHWM4; one (1) Dell R750 Poweredge Server bearing serial number 2WPHWM8; one (1) Dell R750 Poweredge Server bearing serial number 2WPHWM9; three (3) Microsoft Windows Server Datacentre ROK Software; three (3)

Firewalla Gold Plus 2.5 Cyber Security Firewall and Router Suite, and two (2) Vertiv VRC 101 Server Rack Cooling Unit [collectively referred to as the "Equipment"]. In support of such request for relief, the Plaintiff submits proof of an undertaking in the sum of \$48,000.00 (CPLR 7102).

The Court finds that the Plaintiff has demonstrated entitlement to the requested Order of Seizure, which shall: i) Direct Preferred Motors to disclose to Plaintiff the location of the Equipment; and ii) Direct Preferred Motors to turn over possession and control of the Equipment to Plaintiff to a place and in a manner specified by Plaintiff; iii) Prohibit Preferred Motors from disposing of or using the Equipment; iv) Prohibit Preferred Motors' removal, transfer, concealment, disposition, sale, pledging, depletion and/or assignment of the Equipment, and v) Pursuant to CPLR §7102, direct the Sheriff of any county where the Equipment is located, to seize the Equipment, and if the Equipment is not delivered to said Sheriff: Permit said Sheriff to break open, enter, and search for the Equipment at 1998 Hillside Avenue, New Hyde Park, New York 11040, 27 Lorraine Street, Syosset, New York 11791, and at such other addresses at which the Equipment may be located.

The Court finds that the Plaintiff has established entitlement to default judgment against Defendant Preferred Motors pursuant to CPLR 3215 for its failure to answer or otherwise appear in this matter. Furthermore, the Plaintiff's motion is unopposed. Therefore, the Plaintiff's motion for default judgment against Preferred Motors and an Order of Seizure pursuant to CPLR 7102 shall be **GRANTED**.

Accordingly, it is hereby,

ORDERED, that the Plaintiff's motion brought solely against Defendant Preferred Motors Inc. seeking an Order pursuant to CPLR 3215 granting default judgment against Preferred Motors in the sum of \$118,279.23, plus interest thereon calculated at the rate of one and one-half percent

(1.5%) per month from January 12, 2024, plus a termination fee of \$375.00, plus late fees in the sum of \$985.92, plus attorneys' fees totaling \$2,800.00, together with costs and disbursements thereon; is **GRANTED**; and it is further,

ORDERED, that the Plaintiff's motion seeking an Order of Seizure pursuant to CPLR 7102 is **GRANTED**; and it is further,

ORDERED, that Plaintiff is directed to settle Judgment and Order on notice to the Defendants, and to include a copy of this Decision and Order when submitting its proposed Judgment and Order to the Court; and it is further,

ORDERED, that the Clerk of the Court is to schedule a control date for June 26, 2025, as the case has not been discontinued as against Defendant Roberts, but is in effect stayed as against that Defendant due to bankruptcy filing.

This constitutes the Decision and Order of the Court.

Settle Judgment and Order on notice.

Dated: February 26, 2025
Mineola, New York



HON. CONRAD D. SINGER, J.S.C.

ENTERED

Mar 03 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE