

Wells Fargo Bank, N.A. v Ancruem
2025 NY Slip Op 35514(U)
January 17, 2025
Supreme Court, Westchester County
Docket Number: Index No. 61560/2019
Judge: David S. Zuckerman
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DISPO Seq #2 Motion and Case

To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WETCHESTER

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WELLS FARGO BANK, N.A.,

DECISION/ORDER

Plaintiff,

Index No.
61560/2019

-against -

DAVOD ANCRUEM,

Defendant.

-----X
ZUCKERMAN, J.

In this consumer credit action, the papers denominated Documents 1 through 24 in NYSCEF were considered in connection with this motion by Plaintiff seeking a default judgment. There is no opposition to the motion.

Plaintiff brings this breach of contract action seeking to collect a sum certain on an alleged credit card debt. Plaintiff values the default amount at \$5,052.83.

On August 2, 2019, Plaintiff commenced the action by filing a Summons and Complaint. On February 13, 2020, the court (Hubert. J.) granted Plaintiff an additional 30 days to serve Defendant. According to the Affidavit of Service, on March 13, 2020, Defendant was personally served. Defendant has defaulted in timely answering, moving, or appearing.

On April 23, 2021, Plaintiff submitted an Affirmation of Regularity and Default Judgment to the Westchester County Clerk. It appears that the Clerk did not endorse the Judgment.

Pursuant to CPLR §3215(a),

[w]hen a defendant has failed to appear, plead or proceed to trial... the plaintiff may seek a default judgment ...

Pursuant to CPLR 3215(c),

If the plaintiff fails to take proceedings for the entry of judgment within one year after the default, the court shall not enter judgment but shall dismiss the complaint as abandoned . . . unless.

"The language of CPLR §3215 (c) is not, in the first instance, discretionary, but mandatory, inasmuch as courts 'shall' dismiss claims for which default judgments are not sought within the

requisite one year period, as those claims are then deemed abandoned" (*Giglio v NTIMP, Inc.*, 86 AD3d 301, 307-08 [2d Dept 2011]). "To establish the sufficient cause required by CPLR 3215(c), the plaintiff must proffer a reasonable excuse for the delay in moving for leave to enter a default judgment and demonstrate that the cause of action is potentially meritorious" (*U.S. Bank N.A. v Benitez*, 211 AD3d 765 [2d Dept 2022][internal citations omitted]).

The burden of proof for establishing sufficient cause is on the plaintiff (*Wells Fargo Bank, NA v McKenzie*, 183 AD3d 574 [2d Dept 2020]). The plaintiff's allegations concerning an excuse for its delay in seeking a default judgment cannot be vague, conclusory, and unsubstantiated. They must be supported with evidence in admissible form by a person with personal knowledge of the facts (*id*; *Katz v Mangel*, 173 AD3d 989 [2d Dept 2019]). If Plaintiff fails "to proffer a reasonable excuse for its delay in initiating proceedings for a default judgment, it is not necessary to consider whether it had a potentially meritorious cause of action" (*HSBC Bank USA, N.A. v Lem*, 194 AD3d 1027, 1029 [2d Dept 2021]; (Hon. Mark C. Dillon, Practice Commentaries, McKinney's Cons Laws of NY, CPLR 3215)).

Here, Plaintiff alleges the following excuse for its extensive delay:

"8. On or about April 23, 2021, Plaintiff filed an application for default judgment. . . .

9. Plaintiff did not receive any update on the application for default and possible (sic) may be disposed.

10. In an effort to bring this file to resolution, Plaintiff files this motion"

(Affirmation in Support, p. 2). The court finds that counsel's allegations, even if true, do not satisfy Plaintiff's burden to establish "sufficient cause" why the complaint should not be dismissed (CPLR 3215[c]). Moreover, these generic allegations are not supported by evidence in admissible form by a person with personal knowledge of the facts (*Wells Fargo Bank, NA v McKenzie, supra*). Finally, Plaintiff's earlier submission to the Westchester County Clerk also was untimely. Therefore, Plaintiff's motion for a default judgment must be denied.

The remaining contentions, if any, do not compel a different result. Any additional relief requested by any party not expressly considered herein is denied.

Accordingly, upon the foregoing papers, it is hereby

ORDERED that the Complaint is dismissed.

The foregoing constitutes the Opinion, Decision & Order of the Court.

Dated: White Plains, New York
January 17, 2025

A handwritten signature in black ink, appearing to read 'D. S. Zuckerman', written over a horizontal line.

HON. DAVID S. ZUCKERMAN, J.S.C.

TO: All parties via NYSCEF