

LVNV Funding LLC v Noir
2025 NY Slip Op 35551(U)
February 14, 2025
Supreme Court, Westchester County
Docket Number: Index No. 61914/2023
Judge: David S. Zuckerman
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DISPO Seq #1 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 WESTCHESTER

-----X
LVNV FUNDING LLC,

DECISION/ORDER

Plaintiff,

Index No.
61914/2023

-against -

ANDREAN NOIR,

Defendant.

-----X
ZUCKERMAN, J.

In this action for breach of a credit card agreement, the papers denominated Documents 1 through 28 in NYSCEF were considered in connection with this motion by Plaintiff seeking a default judgment. There is no opposition to the motion.

BACKGROUND

On June 1, 2023, Plaintiff commenced the action by filing, *inter alia*, a Summons and Complaint. According to the Affidavit

of Service, on June 6, 2023, Defendant was served by delivering the commencing papers to "Jane Doe" at Defendant's usual place of abode and, on June 7, 2023, mailing the documents to the same address. Defendant has defaulted in timely answering, moving, or appearing. On January 10, 2025, Plaintiff filed the instant motion.

DISCUSSION

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:

"Plaintiff (sic) prior application was rejected and Plaintiff was directed to move the Court to proceed with a default judgment as the additional Notice by the Court was not completed prior to the year of default"

(Affirmation in Support, p. 2).

Preliminarily, the court is unable to decipher what is meant by the above sentence. Moreover, to the extent that Plaintiff is suggesting that it previously moved for a default judgment, same is belied by Plaintiff's own specific allegation that "[n]o prior motion was made for the requested relief herein" (*id*). In addition, there is no prior Notice of Motion in the NYSCEF file. Indeed, the instant application is denominated Motion Sequence Number One. Moreover, to the extent that the above language contains allegations of fact, they are not supported by evidence in admissible form by a person with personal knowledge of the facts (*Wells Fargo Bank, NA v McKenzie, supra*). Consequently, Plaintiff fails to demonstrate "sufficient cause" to excuse the delay in moving for a default judgment (*U.S. Bank N.A. v Benitez, supra*).

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 Plaintiff's motion for a default judgment is denied; and it is further

ORDERED that the Complaint is dismissed.

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

Dated: White Plains, New York
February 14, 2025

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

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

TO: All parties via NYSCEF