

Merchant Capital Collections LLC v JNT Cafe LLC
2025 NY Slip Op 35558(U)
January 2, 2025
Supreme Court, Nassau County
Docket Number: Index No. 611705/24
Judge: Randy Sue Marber
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAUPresent: **HON. RANDY SUE MARBER****JUSTICE**

TRIAL/IAS PART 2

X
MERCHANT CAPITAL COLLECTIONS LLC
AS ASSIGNEE OF FOX CAPITAL GROUP, INC.,

Plaintiff,

Index No.: 611705/24

Motion Sequence...01

-against-

Motion Date...10/18/24

XXXJNT CAFE LLC d/b/a EGG HAVEN CAFE, NEZI,
LLC, JNT CAFÉ LLC and SALI ALIMIM,

Defendants.

X
Papers Submitted:
Notice of Motion.....X

Upon the foregoing papers, the unopposed motion by the Plaintiff, MERCHANT CAPITAL COLLECTIONS LLC AS ASSIGNEE OF FOX CAPITAL GROUP, INC., seeking an Order pursuant to CPLR § 3215, granting a default judgment in its favor as against the Defendants, JNT CAFE LLC d/b/a EGG HAVEN CAFE, NEZI, LLC, JNT CAFÉ LLC (“Company Defendants”) and SALI ALIMIM (“ALIMIM”), is determined as hereinafter provided.

In this breach of contract action, the Plaintiff alleges that on or about January 22, 2024, FOX CAPITAL GROUP, INC. (“FOX”) and the Defendants entered into a Future Receivable Sales Purchase Agreement (“Agreement”) whereby the Plaintiff agreed to purchase \$74,000.00 of the Company Defendants’ future receivables for the sum of

\$50,000.00, to be remitted to FOX from sixteen percent (16%) of the Company Defendants' future receivables. The Defendant, ALIMI, executed a guarantee of performance of all the representations, warranties, and covenants made by the Company Defendants (*See* Agreement, annexed to Motion as Exhibit "B"). Pursuant to the Agreement, the Defendants authorized FOX to make ACH withdrawals from the Defendants' bank account until the balance was fully paid to FOX. The Plaintiff alleges that the Company Defendants initially made payments totaling the sum of \$42,381.26, but thereafter stopped payments on or about May 13, 2024, thereby breaching the Agreement (*See* Plaintiff's Affidavit, NYSCEF Doc. No. "11").

As a result, the Plaintiff alleges that the Company Defendants owe the Plaintiff the balance of the purchased amount, \$31,618.74, together with a default fee of \$5,000.00, for a total of \$36,618.74. The Plaintiff further alleges that the Guarantor Defendant, ALIMI, also failed to remit the balance owed, thereby breaching the personal guarantee.

On or about June 20, 2024, the Plaintiff, MERCHANT CAPITAL COLLECTIONS LLC, and FOX (as "Assignor") entered into an Assignment whereby the Assignor transferred and assigned all of its rights under the Agreement to the Plaintiff, MERCHANT CAPITAL COLLECTIONS LLC (*See* Assignment and Agreement, annexed to Motion as Exhibits "A" and "B", respectively).

This is an action by the Plaintiff to recover the sum of \$36,618.74, due to the Defendants' alleged breach of the Agreement (*See* Summons and Verified Complaint, annexed to Motion as Exhibit "F").

The Plaintiff commenced this action by the filing of a Summons and Verified Complaint on or about July 3, 2024. Pursuant to the Agreement, Defendants waived “personal service of any summons and/or complaint...and agree[d] that service of such documents shall be effective and complete if sent by priority mail or first class mail to the mailing address(es) set forth for [Defendant] above and emailed to the email address, listed on page 1 of [the] Agreement...” (*See* Agreement, annexed to Motion as Exhibit “A” at ¶ 6.5). Additionally, the Plaintiff confirms that the Defendants consented to service of process to be sent by First Class Mail *and* email (*See* Plaintiff’s Affidavit, NYSCEF Doc. No. “11” at ¶ 7). The Affidavits of Service proffered by the Plaintiff reflect that the Defendants were served on July 8, 2024 with a copy of the Summons and Complaint in accordance with the parties’ Agreement. However, the Court notes that the affidavits do not indicate that service was also effectuated via email (*See* Affidavits of Service, annexed to Motion as Exhibit “G”).

Pursuant to CPLR § 3215, a plaintiff may move for a default judgment against a defendant who fails to answer or otherwise appear in the action within one year of the default. Pursuant to CPLR § 3215 (f), the movant must provide: (i) proof of service of the summons and complaint; (ii) an affidavit by the party setting forth the facts constituting the claim; (iii) proof of the default and/or amount due.

Here, the Plaintiff’s motion has been timely filed within one year of the default. However, the Plaintiff failed to provide sufficient proof that the Defendants were duly served with a copy of the Summons and Complaint pursuant to the terms of the parties’ Agreement.

Accordingly, it is hereby

ORDERED, that the unopposed motion by the Plaintiff, MERCHANT CAPITAL COLLECTIONS LLC AS ASSIGNEE OF FOX CAPITAL GROUP, INC., seeking an Order pursuant to CPLR § 3215, granting a default judgment in their favor as against the Defendants, JNT CAFE LLC d/b/a EGG HAVEN CAFE, NEZI, LLC, JNT CAFÉ LLC and SALI ALIMI, is **DENIED**; and it is further

ORDERED, that the Plaintiff's counsel shall serve a copy of this Order upon the Defendants, JNT CAFE LLC d/b/a EGG HAVEN CAFE, NEZI, LLC, JNT CAFÉ LLC and SALI ALIMI, at their last known respective address(es) by email and certified mail, return receipt requested, **AND** by regular mail, within twenty (20) days of the date of entry of this Order. **PROOF OF SERVICE MUST BE FILED WITH THE COURT.**

This constitutes the decision and Order of this Court.

DATED: Mineola, New York
January 2, 2025



Hon. Randy Sue Marber, J.S.C.
XXX

ENTERED

Jan 02 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE