Daimler Truck Fin. Servs. USA v Sugar Shacks Water Inc.
2025 NY Slip Op 35591(U)
February 7, 2025
Supreme Court, Albany County
Docket Number: Index No. 903165-24
Judge: Denise A. Hartman
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STATE OF NEW YORK
SUPREME COURT
COUNTY OF ALBANY

DAIMLER TRUCK FINANCIAL SERVICES USA, LLC,

Plaintiff,

-against-

SUGAR SHACKS WATER INC., TODD BRISTOL, AND KIMBERLY BRISTOL,

Defendants.

DECISION, ORDER & PARTIAL JUDGMENT

Index No. 903165-24

February 7, 2025

HON. DENISE A. HARTMAN, AJSC

APPEARANCES

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No other appearances on motion.

Hartman, J.

Before the Court is the motion of plaintiff Daimler Truck Financial Services USA, LLC, for a default judgment pursuant to CPLR 3215 against defendants Sugar Shacks Water Inc. (Sugar Shacks), Todd Bristol, and Kimberly Bristol. Plaintiff seeks damages for breach of a retail installment contract for the finance of a 2021 Manac trailer against Sugar Shacks, breach of the personal guarantees executed by Todd and Kimberly Bristol based on Sugar Shack's alleged breach and/or conversion, for replevin of the trailer, and attorney's fees. Defendants have not opposed or otherwise appeared in this action. For the reasons that follow, the motion is: denied without prejudice as to the individual defendants; granted, as to liability only on plaintiff's breach of contract and conversion claims against Sugar Shacks; and granted as to plaintiff's claim of replevin against Sugar Shacks.

Background

In April 2022, defendant Kimberly Bristol, on behalf of defendant Sugar Shacks, entered into a retail installment contract with non-party Tracy Road Equipment, Inc. for the purchase of a 2021 Manac model RC339 trailer for $86,900, with taxes, fees, and charges increasing the total transaction cost to $112,550 (*see* NYSCEF Doc No. 10). Under the terms of the contract, Sugar

Shacks was obligated to pay $1,792.50 per month until April 1, 2027 (*see id.*).[1] Defendants Todd Bristol and Kimberly Bristol each executed continuing personal guarantees (*see* NYSCEF Doc No. 12). Defendants made a $5,000 down payment and obtained financing for the remainder of the purchase through plaintiff (*see id.*; *see also* NYSCEF Doc No. 11).

Plaintiff commenced the present action on April 3, 2024 (*see* NYSCEF Doc No. 1). In its verified complaint, plaintiff alleges that defendants defaulted under the terms of the retail installment contract and personal guarantees on September 9, 2023, by failing to make monthly payments. Plaintiff asserts that, "as of January 16, 2024," defendants owed $79,034 "representing the balance due, with interest" on their "outstanding obligation" (*see* NYSCEF Doc No. 2). And plaintiff contends that, despite its demands for the return of the trailer, defendants have refused and remain in possession (*see id.*). To that end, plaintiff seeks replevin of the trailer or, alternatively, conversion damages.

Plaintiff filed affidavits of service, establishing that, on April 10, 2024, Kimberly Bristol was served pursuant to CPLR 308 (1), and Todd Bristol was served pursuant to CPLR 308 (2) (*see* NYSCEF Doc Nos. 4, 5). Plaintiff also filed an affidavit of service establishing that Sugar Shacks was served on April 10, 2024, pursuant to CPLR 311 (a) (1) by serving Kimberly Bristol, Sugar

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[1] The date of commencement for plaintiff's payment obligations contained in the contract is not legible (*see* NYSCEF Doc No. 10 at 2).

Shacks' authorized agent (*see* NYSCEF Doc No. 6). Plaintiff now moves by notice of motion for a default judgment pursuant to CPLR 3215 on its causes of action. Defendants have submitted nothing in opposition.

Analysis

Pursuant to CPLR 3215, "[w]hen a defendant has failed to appear . . . the plaintiff may seek a default judgment against him" (CPLR 3215 [a]). A plaintiff's motion for a default judgment must be supported by "proof of service of the summons and complaint, . . . proof of the facts constituting the claim, the default and the amount due . . . by affidavit made by the party . . . ." (CPLR 3215 [f]). "[D]efaulters are deemed to have admitted all factual allegations contained in [a verified] complaint and all reasonable inferences that flow from them" (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). "The Court, however, must still reach the legal conclusion that those factual allegations establish a prima facie case" (*Walley v Leatherstocking Healthcare, LLC*, 79 AD3d 1236, 1238 [3d Dept 2010]). While the quantum of proof necessary to support an application for a default judgment is not as exacting as the proof required on a motion for summary judgment, "some firsthand confirmation of the facts" forming the basis of the claim must be proffered (*see Woodson*, 100 NY2d at 68 [internal quotation marks and citation omitted]).

A. Plaintiff's Motion for a Default Judgment Against the Individual Defendants is Denied for Failure to Comply with the Additional Notice Requirements of CPLR 3215 (g) (3) (i).

Where default judgment is sought against a natural person based on breach of contract, the CPLR imposes the following additional notice requirement:

> When a default judgment based upon nonappearance is sought against a natural person in an action based upon nonpayment of a contractual obligation an affidavit shall be submitted that additional notice has been given by or on behalf of the plaintiff at least twenty days before the entry of such judgment, by mailing a copy of the summons by first-class mail to the defendant at his place of residence in an envelope bearing the legend "personal and confidential" and not indicating on the outside of the envelope that the communication is from an attorney or concerns an alleged debt.

(CPLR 3215 [g] [3] [i]).

Here, plaintiff has established proper CPLR article 3 service on the individual defendants based on the affidavits of service uploaded to NYSCEF (*see* NYSCEF Doc Nos. 4, 5).[2] But, inasmuch as plaintiff seeks a default judgment against the individual defendants for Sugar Shack's alleged breach of contract, it was required to provide proof of additional notice pursuant to

[2] Plaintiff's affidavit in support of default appears to contain erroneous service dates inasmuch as it references service of an "Order to Show Cause[and] Petition" on "August 5, 2024, and August 8, 2024" and that "[d]efendant's time to answer the Petition has expired" and "[d]efendants is [sic] in default since September 16, 2024" (NYSCEF Doc NO. 16 at ¶¶ 5, 7).

CPLR 3215 (g) (3) (i). Plaintiff, however, has not provided proof of additional notice. Accordingly, plaintiff's motion, insofar as asserted against the individual defendants, is denied without prejudice (*see* CPLR 3215 [g] [3] [i]).

Additional notice is also required where a default judgment is sought against a domestic corporation for breach of contract, but only where such corporation is served pursuant to subdivision (b) of the Business Corporation Law [BCL] § 306 (*see* CPLR 3215 [g] [4] [i]). Here, no additional notice was required pursuant to CPLR 3214 (g) (4) (i) on Sugar Shacks because it was served pursuant to CPLR 311 (a) (1), not BCL 306 (b). The Court therefore turns to the causes of action insofar as asserted against Sugar Shacks in the unanswered complaint.

B. Plaintiff's Motion for Default Judgment Against Sugar Shacks is Granted, in part, as to Liability Only.

The unanswered complaint alleges four causes supported by many overlapping allegations. But the general thread in the complaint is the alleged breach of the retail installment contract. Accordingly, for the sake of clarity, the Court will assess the sufficiency of the causes of action and supporting factual assertions beginning with plaintiff's third cause of action for breach of contract.

1. Breach of Contract

Plaintiff has established a prima facie case for its third cause of action for breach of contract insofar as asserted against Sugar Shacks. Plaintiff submits the verified complaint, retail installment contract, and affidavit of R. Guerrero, plaintiff's authorized representative, and proof of lien.[3] These submissions establish that plaintiff performed its obligation under the contract by providing financing for defendants' purchase of the trailer and that defendant Sugar Shacks breached its obligation to make monthly payments pursuant to the contract on September 9, 2023, resulting in damages to plaintiff. Accordingly, plaintiff has established a prima facie case against Sugar Shacks for liability on the contract. But plaintiff has not established damages.

Pursuant to CPLR 3215(a), if the damages sought are not for a sum certain or for an amount which can be made certain, a default judgment is only as to liability, where the defendant admits all traversable allegations in the complaint as to liability, but not plaintiff's conclusion as to damages (*see Curiale v. Ardra Ins. Co.*, 88 NY2d 268, 279 [1996]; *Rokina Optical Co., Inc. v*

[3] Insofar as plaintiff asserts its third cause of action for breach of contract against the individual guarantor defendants, the Court reserves decision based on plaintiff's failure to establish entitlement to a default judgment against the individual defendants.

Camera King, Inc., 63 NY2d 728, 730 [1984]; *Xiaokang Xu v. Xiaoling Shirley He*, 147 AD3d 1223, 1223 [3d Dept 2017]).

Here, plaintiff relies exclusively on the verified complaint and Guerrero's affidavit in support of its claimed damages of $79,034, which it represents "the balance due with interest" on the defendants' outstanding obligation under the contract as of January 16, 2024. Plaintiff does not indicate, however, what interest rate (statutory or otherwise) this figure includes. And there are no business records attached to the Guerrero affidavit, or elsewhere in the record, such as monthly statements, to establish defendants' claimed damages. And though Guerror's affidavit indicates that he has knowledge of the damages based on his review of plaintiff's records, it is the business record themselves, not the foundational affidavit, that serve as proof of the matter asserted (*see Deutsche Bank Trust Co. Ams. v Miller*, 198 AD3d 867, 868 [2d Dept 2021]). Consequently, the plaintiff's motion is denied as to the issue of damages on its breach of contract claim.

2. Replevin

Plaintiff's first cause of action alleges, in part, that it is entitled to immediate possession of the trailer based on defendants' default under the contract. NY UCC § 9-609 (a) (1) entitles a secured party to take possession of secured collateral upon default. To establish prima facie entitlement on "[a] cause of action sounding in replevin[, the plaintiff] must establish that the defendant is in possession of certain property of which the plaintiff claims to have a superior right" (*Matatov*, 187 AD3d at 1012 [internal quotation marks and citation omitted]; *see* CPLR 7101).

Plaintiff submits the retail installment contract, the verified complaint, Guerrero's affidavit, and a copy of its lien on the trailer in support of its cause of action for replevin. Through these submissions, plaintiff establishes prima facie that it holds a superior right to the trailer, that Sugar Shacks defaulted on its obligation to make monthly installment payments under the contract and, upon such default, plaintiff was entitled to take possession of the trailer. Consequently, plaintiff has established entitlement to judgment on its claim of replevin.

3. Conversion

Plaintiff's first cause of action also appears to seek conversion damages insofar as it alleges that, "[b]y reason of the wrongful detention of the [trailer], plaintiff has been damaged in the sum of $79,034, as of January 16, 2024" (NYSCEF Doc No. 2 at ¶ 5). Plaintiff's second cause of action makes duplicative allegations inasmuch as it alleges that plaintiff "has been damaged in the sum of at least $79,034.00, as of January 16, 2024, by the detention of said [trailer] by the defendants, said sum representing the balance due, with interest thereon, on the outstanding obligation" (NYSCEF Doc No. 2 at ¶ 7). Accordingly, the Court's analysis is the same for these causes of action.

To establish prima facie entitlement to conversion damages, "a plaintiff must show (1) legal ownership or an immediate right of possession to a specific identifiable thing and (2) that the defendant exercised an unauthorized dominion over the thing in question to the exclusion of the plaintiff's right" (*Giardini v Settanni*, 159 AD3d 874, 875 [2d Dept 2018]).

As stated above, plaintiff has established that it has an immediate right to possession of the trailer based on its lien and the terms of the contact entitling it to repossess the trailer upon default, and that defendant Sugar Shacks defaulted under the terms of the contract by failing to make payments and subsequently refused to return the trailer upon plaintiff's demands. Thus, plaintiff has established prima facie for liability on its conversion cause of action.

However, plaintiff's motion is denied as to the issue of damages on its conversion claim. The measure of damages on a conversion claim is the value of the property at the time of conversion (*see Phillips v Catania,* 155 AD2d 866 866 [4th Dept 1989]). Plaintiff has not proffered any proof to establish that the asserted, but unproven, contract value is the same as the value of the vehicle at the time of conversion.[4]

[4] Plaintiff's conversion claims are arguably duplicative of its breach of contract claim. Plaintiff's conversion claims are premised on defendants' failure to return the trailer upon their default—in violation of the contract. Should plaintiff recover on its breach of contract claim, it will be precluded from double recovery under a theory of conversion.

4. Attorney's Fees

As to plaintiff's fourth cause of action, although the contract permits plaintiff to recover reasonable attorney's fees, plaintiff has not proffered any proof in support the amount of this claim. The Court, therefore, reserves on the issue attorney's fees, which may be supplemented after the inquest.

Based on the foregoing, it is hereby

ORDERED that plaintiff's motion for a default judgment against the individual defendants is **DENIED** without prejudice to refiling upon proof of compliance with CPLR 3215, within 45 days of service of notice of entry of this decision and order; and it is further

ORDERED that plaintiff's motion for a default judgment against Sugar Shacks is **GRANTED**, in part, as to liability only on its causes of action for breach of contract and conversion as set forth herein; and it is further

ORDERED, ADJUDGED AND DECREED that plaintiff is entitled to take immediate possession of the trailer on its cause of action for replevin against Sugar Shacks; and it is further

ORDERED that an inquest on plaintiff's claims, other than replevin against Sugar Shacks which is disposed of by this decision, order and judgment, will be held in abeyance pending plaintiff re-filing against the individual defendants within 45 days of service of notice of entry of this decision and order. Upon expiration of that deadline, the Court will set a return date for inquest by written submissions on all claims for which plaintiff have received judgment as to liability. The Court will also set the deadline for defendants to file response(s) and request for a hearing.

This constitutes the Decision and Order of the Court, the original of which is being uploaded to NYSCEF for electronic entry by the Albany County Clerk. Upon such entry, counsel for plaintiff shall promptly serve notice of entry on all other parties entitled to such notice.

Dated: Albany, New York
February 7, 2025

Denise A. Hartman
HON. DENISE A. HARTMAN
Acting Justice of the Supreme Court

02/07/2025

Papers Considered:

NYSCEF Doc Nos. 1-16