

Ally Bank v Kamar
2025 NY Slip Op 35600(U)
January 10, 2025
Supreme Court, Nassau County
Docket Number: Index No. 601680/2020
Judge: Christopher T. McGrath
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU
PRESENT: HON. CHRISTOPHER T. McGRATH**

ALLY BANK

Plaintiff,

SUKRAJ K KAMAR and JASPAL SINGH

Defendants.

IAS TRIAL PART: 25

601680/2020

MOTION SEQ. 001

MOTION SUBMITTED:

November 12, 2024

DECISION & ORDER

The following e-filed documents for Motion Sequence 001, listed by NYSCEF document numbers "13," through "21," have been read and considered on this motion.

Plaintiff, Ally Bank, moves pursuant to CPLR §3215 for an Order granting a default judgment in its favor and against Defendants Sukraj K Kalmar and Jaspal Singh.

Plaintiff commenced this action to recover for non-payment of a balance due and owing for the total sum of \$19,536.13 on February 03, 2020. A copy of the summons and complaint was served upon the DefendantS on February 12, 2020.

In support of Plaintiff's application, the Plaintiff annexes the following documents: 1) summons, complaint, affidavit of service; 2) affidavit of facts by the original creditor; 3) purchase/lease agreement; 3) a letter from Plaintiff dated August 22, 2017, advising defendants of the amount owed; 4) affirmation of statute of limitations; and 5) affirmation of non-military service.

Plaintiff annexes an affidavit from Sarah Grayson-Witt, who is an employee of Plaintiff. Sarah states that the account that is the subject of this action ("Account") related to credit given to and owed by Defendants to Plaintiff pursuant to and in accordance with an agreement for the purchase or lease of a motor vehicle. Sarah maintains that the outstanding balance owed to Plaintiff by Defendants, exclusive of all set-offs and just grounds of defense, is \$19,536.13. (see Exhibit B, Affidavit of Facts by Original Creditor, Notice of Motion). Annexed to the moving papers is also a copy of the certain purchase/lease agreement which is illegible. (see Exhibit B, Affidavit of Facts by Original Creditor, Notice of Motion).

Plaintiff's counsel Tromberg, Morris & Poulin, PLLC f/k/a Stephen Einstein and Associates, P.C. (hereinafter "TMP") concedes that it failed comply with CPLR §3215(a) as it failed to take proceedings for the entry of judgment within one year after the default. However, Plaintiff maintains that it has both a reasonable excuse for the delay in timely moving for a default judgment, plus it can demonstrate that the cause of action is potentially meritorious. (CPLR §3215(c)). Plaintiff maintains that in light of the New York Former Governor Andrew M. Cuomo's Executive Order's No. 202.00- 202.67 relating to COVID restrictions from March 2020 to November 2020, TMP did not file for default judgment within one year of the time of Defendants' default. Plaintiff maintains that the Executive Order prevented TMP to be fully staffed and to be physically in the New York City office. As a result, TMP states that it was unable to order and process affidavits from its clients, thereby inhibiting the ability to submit for submission of judgment within twelve months of completion of service date. Further, TMP contends that due to the effect of COVID, TMP had a significant reduction of staff, which further delayed its ability to get backlogged filed moving in due course. Plaintiff argues that "notwithstanding, the court has explicit discretion pursuant to CPLR §2005 'as a matter of law in the interests of justice to excuse delay or default,' citing to, *CEO Bus. Brokers, Inc. v. Algabili*, 105 AD3d 989, 990 [2d Dept 2013] and *HSBC Bank USA, N.A. v. Wider*, 101 AD3d 683 [2d Dept 2012]).

Discussion

CPLR 3215(a) provides that "[w]hen a defendant has failed to appear, plead or proceed to trial ... the plaintiff may seek a default judgment against him [or her]." However, pursuant to CPLR 3215(c), "[i]f the plaintiff fails to take proceedings for the entry of judgment within one year after [a defendant's] default, the court shall not enter judgment but shall dismiss the complaint as abandoned ... unless sufficient cause is shown why the complaint should not be dismissed." (*US Bank N.A. v Davis*, 196 AD3d 530, 532-33 [2d Dept 2021])

"The failure to timely seek a default may be excused if sufficient cause is shown why the complaint should not be dismissed, which requires the plaintiff to proffer a reasonable excuse for the delay in timely moving for a default judgment and to demonstrate that the cause of action is potentially meritorious" (*HSBC Bank USA, N.A. v. Grella*, 145 A.D.3d 669, 671, 44 N.Y.S.3d 56 [citation and internal quotation marks omitted]; see *Ibrahim v. Nablus Sweets Corp.*, 161 A.D.3d 961, 963, 77 N.Y.S.3d 439; *JBBNY, LLC v. Begum*, 156 A.D.3d 769, 771, 67 N.Y.S.3d 284). As

long as the plaintiff has initiated proceedings for the entry of a judgment within one year of the default, there is no basis for dismissal of the complaint pursuant to CPLR 3215(c) (see *Deutsche Bank Natl. Trust Co. v. Khalil*, 208 A.D.3d at 557–558, 173 N.Y.S.3d 568; *HSBC Bank USA, N.A. v. Roldan*, 155 A.D.3d at 944, 64 N.Y.S.3d 111). *U.S. Bank N.A. v DiGiovanni*, 231 AD3d 1077, 1078 [2d Dept 2024]. “ ‘The determination of whether an excuse is reasonable in any given instance is committed to the sound discretion of the motion court’ ” (*HSBC Bank USA, N.A. v. Seidner*, 159 A.D.3d 1035, 1036, 74 N.Y.S.3d 282, quoting *Giglio v. NTIMP, Inc.*, 86 A.D.3d 301, 308, 926 N.Y.S.2d 546; see *Ibrahim v. Nablus Sweets Corp.*, 161 A.D.3d at 963, 77 N.Y.S.3d 439). *Bank of Am., N.A. v Santos*, 175 AD3d 449, 450 [2d Dept 2019]

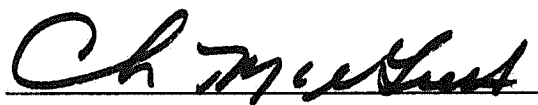
“The one-year statutory time frame is not one year from the commencement of the action, but one year from when the defendant's answer or responsive motion was due, which itself is measured from when service is deemed complete” (*Citibank, N.A. v. Kerszko*, 203 A.D.3d 42, 49, 161 N.Y.S.3d 232). *U.S. Bank N.A. v DiGiovanni*, 231 AD3d 1077, 1078 [2d Dept 2024]

Contrary to the Plaintiff's contention, it failed to demonstrate sufficient cause for its failure to timely seek a default judgment against the Defendants. Plaintiff states that COVID and the former Governor's executive orders relating to COVID restrictions from March 2020 to November 2020, caused the delay for Plaintiff's failure to seek a default judgment. While the former Governor's executive orders relating to COVID may have played a role in the delay, this Court reminds counsel that it originally filed the summons and complaint on February 03, 2020 and served a copy of the summons and complaint upon the Defendants on February 12, 2020. Plaintiff's current application for a default judgment was filed on October 17, 2024 and submitted to this court for consideration on November 12, 2024. It is unreasonable for the Plaintiff to attribute its four-to nearly five- year delay in moving for a default judgment to the COVID-19 pandemic. While the pandemic undoubtedly caused certain interruptions, these do not justify the extensive delay pursuing this matter, particularly given the resumption of court operations and availability of electronic filing mechanisms during this period. Additionally, TMP states that another reason for its delay, was difficulty obtaining affidavits from its clients and a reduction in its law firm's staff due to COVID. These conclusory and unsubstantial assertions are insufficient are to justify the plaintiff's failure to seek a default judgment. (*See HSBC Bank USA, N.A. v Lem*, 194 AD3d 1027, 1029 [2d Dept 2021])

As the plaintiff failed 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]).

Accordingly, Plaintiff's application is hereby **denied**.

Date: January 10, 2025
Mineola, New York



HON. CHRISTOPHER T. McGRATH

ENTERED

Jan 17 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE