

T.D. Bank, N.A. v DG Orue Inc.
2025 NY Slip Op 35603(U)
January 21, 2025
Supreme Court, Nassau County
Docket Number: Index No. 603685/2024
Judge: Francis Ricigliano
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU - IAS PART 26

Present: HON. FRANCIS RICIGLIANO
Justice of the Supreme Court

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T.D. BANK, N.A.,

Plaintiff,

-against-

DG ORUE INC. and DAVID ORUE,

Defendants.

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DECISION & ORDER

INDEX NO.: 603685/2024

Motion Seq. 1

The following e-filed documents were reviewed in consideration of this motion:

Notice of Motion, Affirmations, Exhibits, etc. 5 - 24.

This is an action to recover for breach of a Business Loan Agreement, Commercial Guaranty, and Commercial Security Agreement. Plaintiff's Complaint alleges that, among things, the parties executed the aforementioned documents on November 6, 2018, as part of a United States Small Business Administration Loan issued by plaintiff in the amount of \$100,000.00. Plaintiff further alleges they declared defendants to be in default on November 28, 2023, at which time they accelerated the loan and demanded immediate payment of all amounts due on the loan. As of February 20, 2024 – the Verified Complaint was filed on February 24, 2024 – the principal amount due on the loan was \$90,375.31, plus accrued interest, late charges, and other allowed charges, as well loan and collection expenses, legal fees, and costs, as allowed by the Note and Loan Agreement.

By Notice of Motion, plaintiff TD BANK, N.A., moves for an order directing entry of a default judgment against defendants DG ORUE, INC., and DAVID ORUE pursuant to CPLR 3215, or in the alternative, an order that "proceedings for the entry of a judgment or the making of an assessment, the taking of an account or proof, or the direction of a reference be conducted at the time of or following the trial or other disposition of the action against the

defendants who have not answered." In addition, plaintiff seeks a judgment against defendant DG ORUE, INC., (a) compelling DG ORUE, INC., to make "the aforesaid collateral" available to TD BANK, N.A., for sale or other disposition pursuant to the Uniform Commercial Code; (b) authorizing TD BANK, N.A., to sell, liquidate, dispose of or retain the aforesaid collateral in a commercially reasonable manner, with the proceeds from the same being applied first to the costs of such sale or other disposition and then in reduction of the amounts due from DG ORUE, INC.; (c) restraining DG ORUE, INC., from any use of the collateral; (d) requiring DG ORUE, INC., to hold all collateral and all proceeds from collateral in trust for TD BANK, N.A.; (e) issuing a Writ of Replevin directed to the Sheriff or other lawfully authorized officers of Nassau County where the collateral may be found and directing that such Sheriff or other officers take immediate possession of the collateral and deliver the same to TD BANK, N.A., the court-appointed receiver or other court-appointed agent, as this Court may direct; and for such costs of suit and other relief as the Court deems appropriate.

In order to obtain a default judgment based upon a defendant's failure to answer a Complaint or otherwise appear in an action pursuant to CPLR 3215, a movant is required to file proof of service of the Summons and Complaint, proof of the other party's default, and proof of the facts constituting the claim. *Global Liberty Ins. Co. v. Haar Orthopaedics & Sports Med., P.C.*, 170 AD3d 1125, 1126 (2d Dept 2019).

In regard to the requirement that a party seeking a default judgment file proof of service of the Summons and Complaint, plaintiff has submitted Affidavits of Service that indicates service of the Summons and Complaint was made on defendant DG ORUE, INC., by delivery to the New York Secretary of State pursuant to BCL 306, and upon defendant DAVID ORUE pursuant to CPLR 308 (2). In addition, plaintiff has also submitted an Affidavit of Service on both defendants in satisfaction of the additional notice required by CPLR 3215 (g) before entering a default judgment.

In regard to the requirement that the movant submit proof of the defendants' default, plaintiff has submitted proof of the defendants' default in answering via an Affirmation in Support by their attorney.

In regard to the requirement that the movant submit sufficient proof of the facts constituting the claim, plaintiff has satisfied that requirement via the submission of, among other things, a copy of the Complaint, which was verified by Theresa Calsetta, who is employed by plaintiff as an SBA Workout Officer, copies of a Promissory Note, a Business Loan Agreement, and a Commercial Security Agreement executed by DAVID ORUE as President of DG ORUE, INC., and a copy of a Commercial Guaranty executed by DAVID ORUE personally. See *Dee v. Rakower*, 112 AD3d 204, 208-209 (2d Dept 2013) (Holding that in order to establish a claim for breach of contract, a party must demonstrate the existence of a contract, the party's obligation to perform, the breach of the contractual obligation, and damages resulting from the breach); *North Fork Bank Corp. v. Graphic Forms Assoc., Inc.*, 36 AD3d 676, 676 (2d Dept 2007) (Holding that in order to establish a claim for breach of guaranty, the moving party must submit proof of the underlying agreement and signed guaranty, along with proof of the opposing party's default).

Having failed to appear or otherwise answer the allegations set forth in the Verified Complaint, the defendants are "deemed to have admitted the factual allegations set forth in the Complaint and all reasonable inferences that flow from them." *Woodson v. Mendon Leasing Corp.*, 100 NY2d 62 (2003).

Finally, it is also clear that plaintiff has made the motion for a default judgment within one year of the default, as required by CPLR 3215 (a).

Accordingly, it is hereby

ORDERED, that plaintiff's motion for a default judgment against defendants DG ORUE, INC., and DAVID ORUE is GRANTED; and it is further

ORDERED, that plaintiff shall submit to the Judgment Clerk a proposed judgment consistent with this Decision and Order; and it is further

ORDERED, that plaintiff shall serve a copy of this Decision and Order with Notice of Entry upon the defendants by certified mail, return receipt requested, and by regular mail, within twenty (20) days of the date of entry of this Order, and shall file proof thereof within ten (10) days thereafter.

This constitutes the Decision and Order of this Court. Any and all relief not specifically addressed herein is denied.

Dated: January 21, 2025

ENTER:



HON. FRANCIS RICIGLIANO, J.S.C.

ENTERED

Jan 27 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE