

Henderson v Results Plus LLC
2025 NY Slip Op 35614(U)
January 21, 2025
Supreme Court, Nassau County
Docket Number: Index No. 608261/2023
Judge: Sharon M.J. Gianelli
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU -- Commercial Division Part 7
Present: Hon. Sharon M.J. Gianelli

SHARON HENDERSON,

Plaintiff,

vs.

RESULTS PLUS LLC and ANDRE CALIXTE,

Defendants.

Index No: 608261/2023

Motion Seq. No. 002

Decision and Order

Papers Submitted:

Notice of Motion, Affidavit, Affirmation and

Exhibits in Support

Affidavit in Opposition

Memorandum of Law in Reply

X

X

X

X

Plaintiff moves for an order directing the entry of judgment by default in favor of Plaintiff and against each of the defendants, Results Plus LLC and Andre Calixte, for the relief demanded in the Verified Complaint dated July 7, 2023.

Background

Plaintiff commenced this action by filing a Summons with Notice on May 23, 2023. On July 7, 2023, Plaintiff filed an Amended Summons and Verified Complaint seeking monetary and declaratory relief in connection with Defendants' alleged failure to repay Plaintiff's investment pursuant to the terms of a Real Property Investment Agreement entered into between the parties. Defendants Results Plus LLC ("Results Plus") and Andre Calixte ("Calixte") interposed an Answer on November 2, 2023.

As set forth in the Verified Complaint, the parties entered into a Real Property Investment Agreement dated October 4, 2019 (the "Agreement") whereby Plaintiff agreed to provide \$93,000 to Defendant Results Plus to engage in real estate investments. In return, Defendant Results Plus promised to repay the principal amount within twelve (12) months, along with a \$30,000 return on investment. Defendant Calixte initiated partial payments totaling \$22,800 in monthly installments of \$1,900 but ceased making payments in June 2022, leaving a balance of \$70,200 in principal and \$30,000 in promised returns unpaid.

Plaintiff alleges that Defendants failed to invest the funds as promised, misrepresented material facts, and unjustly enriched themselves at her expense. Plaintiff seeks declaratory relief, damages for breach of contract, and remedies for unjust enrichment and fraud in the inducement.

By Decision and Order dated May 8, 2024, this Court relieved Richard Paul Stone, Esq. as counsel for Defendants Results Plus and Calixte, staying this matter for thirty (30) days to afford Defendants the opportunity to retain new counsel. To date, no new attorneys of record have appeared in this action on behalf of either defendant.

Plaintiff now moves for default judgment against Defendants, jointly and severally, in the amount of \$100,200, plus costs and interest arguing, *inter alia*, that Defendants defaulted by failing to appear for scheduled court conferences in June, July and August of 2024, or otherwise communicate with the Court or Plaintiff's counsel.

In opposition to the motion, Defendant Calixte, *pro se*, submits an affidavit asserting defenses to the allegations in Plaintiff's Complaint. Defendant Calixte states: "I HAVE PROOF TO SHOW [THAT] THE MONEY WAS INVESTED ACCORDING TO THE COMPANY PLAN [AND] OBJECTIVES [AND] I TOO HAVE LOST." Defendant Calixte attaches documents as proof.

Law/Analysis

Pursuant to CPLR §3215, a plaintiff may seek a default judgment against a defendant who fails to answer or appear (see CPLR 3215; *U.S. Bank, N.A. v. Razon*, 115 AD3d 739, 740). On a motion for a default judgment, the movant must provide proof of: (1) service of the summons and complaint; (2) the facts constituting the claim for a certain or ascertainable sum; and (3) default, and (4) move within a year of the default (CPLR § 3215). The standard of proof for default judgment is not stringent, amounting only to some firsthand confirmation of the facts (*Fefer v. Malpeso*, 210 AD2d 60 [1st Dept 1994]). Some proof of liability is required to satisfy the Court as to the prima facie validity of the uncontested cause of action (*Id.*).

"In order to successfully oppose a motion for a default judgment, a defendant must demonstrate a justifiable excuse for his default and a meritorious defense" (*New Media Holding Co. LLC v. Kagalovsky*, 97 AD3d 463, 465 [1st Dept 2012]). Whether a reasonable excuse exists is a "discretionary, sui generis determination to be made by the court based on all relevant factors," including, among other things, whether there has been prejudice to the opposing party, whether there has been willfulness, and the policy in favor of resolving cases on the merits (*Jones v. 414 Equities LLC*, 57 AD3d 65, 465

[1st Dept 2008]]. Moreover, courts have the inherent power to forgive even an unexplained default in the interest of justice” (*Id.*).

Here, Plaintiff has satisfied the procedural requirements for default judgment under CPLR §3215 by providing proof of service, facts constituting the claim, and timely filing the motion. While Plaintiff has satisfied the procedural requirements under CPLR § 3215, Defendant Calixte, appearing *pro se*, has demonstrated an attempt to participate in the proceedings by submitting an affidavit and supporting documents, suggesting a lack of willful default and a potentially meritorious defense. Defendant Calixte asserts that the funds were invested according to “the Company Plan”, attaching documents in support of this claim. Whether or not the defense is likely to prevail, it raises a triable issue of fact regarding whether Defendants breached the Agreement or misused funds. Defendant Calixte’s appearance in this action, even after his prior counsel’s withdrawal, indicates an intent to defend against Plaintiff’s claims.

Given the policy favoring resolution of disputes on the merits and the lack of significant prejudice to Plaintiff, this Court in its discretion, denies the motion as to Defendant Calixte permitting the case to proceed on its merits.

On the contrary, Defendant Results Plus has defaulted by failing to appear at scheduled conferences, failing to retain new counsel after prior counsel was relieved, and failing to oppose the instant motion. Under New York law, a limited liability company must be represented by counsel, and its failure to do so constitutes a default (see CPLR 321[a]). As no meritorious defenses or justifiable excuses have been offered on behalf of

Defendant Results Plus, default judgment shall be entered against Defendant Results Plus.

Accordingly,

It is

ORDERED, that Plaintiff's motion for an order directing the entry of judgment by default in favor of Plaintiff and against each of the defendants, Results Plus LLC and Andre Calixte, for the relief demanded in the Verified Complaint dated July 7, 2023, is Granted only as to Defendant Results Plus LLC; and

It is

ORDERED, that a money judgment shall be entered in the amount of \$100,200.00 plus costs and interest at the statutory rate; and

It is

ORDERED, that Plaintiff is directed to submit a judgment to the Nassau County Clerk consistent with this Order and serve Defendants Results Plus LLC and Andre Calixte by overnight mail; and

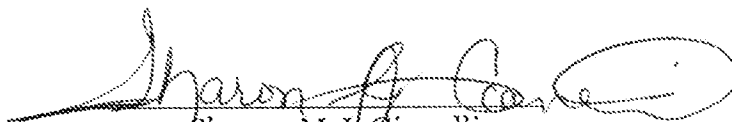
It is

ORDERED, that the parties remaining in this action are directed to appear, in-person, for a conference before this Court on February 11, 2025 at 10:00 a.m.

All applications not specifically addressed herein are denied.

This constitutes the Decision and Order of the Court.

DATED: Mineola, New York
January 21, 2025



Sharon M.J. Gianelli
Justice of the Supreme Court

ENTERED

Jan 27 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE