

Oberon Sec., LLC v Captivision Korea, Inc.
2026 NY Slip Op 31595(U)
April 14, 2026
Supreme Court, New York County
Docket Number: Index No. 651314/2024
Judge: Anar R. Patel
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 45

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OBERON SECURITIES, LLC

Plaintiff,

- v -

CAPTIVISION KOREA, INC.,

Defendant.

INDEX NO. 651314/2024

MOTION DATE 02/19/2026

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

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HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 81–99, 101 were read on this motion to/for JUDGMENT – DEFAULT.

Relevant Factual and Procedural Background

This case arises from a novation agreement (“Agreement”) (NYSCEF Doc. No. 85) entered into on June 1, 2022, between Plaintiff Oberon Securities LLC (“Plaintiff”), Defendant Captivision Korea, Inc (“Defendant”) (as successor to GLAAM Co., Ltd.), and third-party Alantra, LCC (“Alantra”) pursuant to which Plaintiff provided financial consulting and investment banking services to Defendant. NYSCEF Doc. No. 83 (Angelin Aff.) at ¶ 3–4; NYSCEF Doc. No. 82 (Pl.’s Mem. of L. in Supp.) at 2.

From June 2022 to November 2023, Plaintiff performed the obligations under the Agreement, which included providing advice to Defendant with respect to a proposed merger transaction with Captivision, Inc. (the “Merger”). Pl.’s Mem. of L. in Supp. at 2. In exchange for said services, Defendant agreed to pay a monthly retainer fee and Transaction Fee upon the closing of the Merger. *Id.* at 2–3. In September 2023, Plaintiff calculated the fees relating to the closing of the Merger at \$5,553,718 and provided said calculation to Defendant. Angelin Aff. at ¶¶ 5–10. The Merger was completed on November 15, 2023, thereby forming Captivision Korea, Inc. *Id.* at ¶ 11. Plaintiff alleges that Defendant did not pay Oberon any portion of the Transaction Fee. *Id.* at ¶ 12.

On March 12, 2024, Plaintiff commenced the present action against Defendant for breach of contract under the Agreement with the filing the Summons and Complaint. NYSCEF Doc. No. 1. On August 9, 2024, Defendant filed its Verified Answer and Counterclaims. NYSCEF Doc. No. 7. The parties appeared for a preliminary conference on October 1, 2024. NYSCEF Doc. No. 20.

On January 16, 2025, Lewis Baach Kaufmann Middlemiss, PLLC (“Lewis Baach”) moved by Order to Show Cause to withdraw as counsel for Defendant. NYSCEF Doc. No. 26. Lewis Baach alleged that, on October 24, 2024, Defendant advised that it was experiencing changes that could impact litigation and, soon thereafter, there was a breakdown in communication between Defendant and Lewis Baach. NYSCEF Doc. No. 27 (Shinerock Aff.) at ¶ 8. Lewis Baach further alleged that, on November 13, 2024, Defendant informed Lewis Baach that it was unable to pay legal fees and could not fund further litigation. *Id.* at ¶ 9. On that same date, Lewis Baach informed Defendant that it would withdraw as counsel. *Id.* at ¶ 10.

However, on February 12, 2025, Lewis Baach filed a letter to the Court requesting to withdraw the pending Order to Show Cause because Defendant confirmed its commitment to the present litigation and indicated it would meet its financial commitments. NYSCEF Doc. No. 37 (Letter Withdrawing OTSC). Accordingly, on February 13, 2025, the Court denied Defendant’s Order to Show Cause as moot. NYSCEF Doc. No. 39 (2/13/25 Decision and Order). However, on August 13, 2025, Lewis Baach notified the Court that Defendant had not remedied its inability to meet its financial commitments, and, therefore, Lewis Baach again requested leave to move to withdraw as counsel. NYSCEF Doc. No. 51 (8/13/25 Letter). The Court granted Lewis Baach leave to file an Order to Show Cause on August 13, 2025. The parties appeared for oral argument on the motion (Mot. Seq. No. 002) on September 3, 2025, whereby the Court (1) granted Lewis Baach’s motion to withdraw as counsel for Defendant; (2) stayed the action until October 6, 2025 to allow Defendant time to retain replacement counsel; and (3) directed the parties to appear for a status conference on October 7, 2025. NYSCEF Doc. No. 60 (9/4/25 Decision and Order). The Court advised Defendant both in its Decision and Order (“because Captivision is an LLC that cannot appear *pro se*, this Court will, upon motion from Plaintiff, enter a default judgment against Captivision and dismiss its Counterclaims, absent the filing of said notice of appearance”), and on the record (NYSCEF Doc. No. 64 (Tr.) at 8:1–4) that Defendant, as an LLC, could not proceed *pro se*.

On October 6, 2025, Defendant filed a Notice of Appearance through its new counsel Kim & Bae, PC (“Kim & Bae”). NYSCEF Doc. No. 65. The parties appeared for a preliminary conference on October 7, 2025, whereby the Court amended the discovery schedule to provide for extended dates. NYSCEF Doc. Nos. 69 (Sec. Am. PC Order), 70 (Tr.). On December 8, 2025, Defendant sent a letter to Kim & Bae terminating the relationship due to a severe financial crisis. NYSCEF Doc. No. 96 (Termination of Counsel Letter). On December 10, 2025, Kim & Bae filed a letter to the Court requesting leave to file a motion to withdraw as counsel. NYSCEF Doc. No. 72 (Pre-Motion Letter). On January 7, 2026, the parties appeared for oral argument on Kim & Bae’s motion to withdraw as counsel (Mot. Seq. No. 003), whereby the Court (1) granted Kim & Bae’s motion; (2) stayed the action until February 9, 2026 to allow Defendant time to retain replacement counsel; and (3) again advised Defendant that it could not proceed *pro se* as an LLC. NYSCEF Doc. No. 78 (1/12/26 Decision and Order) (“unless Captivision has retained replacement counsel, and said replacement counsel has e-filed a notice of appearance, Captivision will be considered *pro se* (self-represented), and because Captivision is an LLC that cannot appear *pro se*, Plaintiff shall file the appropriate motion thereto on or before February 19, 2026”).

On February 19, 2026, Plaintiff moved for an order of default judgment after Defendant failed to retain replacement counsel. NYSCEF Doc. No. 81. On March 12, 2026, Defendant’s CEO, Keong Rae Kim, sent an email to Plaintiff’s counsel stating that Defendant had sent an

“opposition memorandum” to the Court, but did not indicate that Defendant had retained new counsel. NYSCEF Doc. No. 101 (Pl. Reply) at 2. Defendant did not file any opposition on the docket or otherwise communicate with the Court. Plaintiff filed its reply on March 15, 2026. *Id.*

Legal Analysis

Default judgment is appropriate where, “a defendant has failed to appear, plead or proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed.” CPLR § 3215(a). In New York, “LLCs cannot be represented by individual shareholders or members; they must be represented by counsel.” *Park v. Song*, 85 N.Y.S.3d 855, 857 (N.Y. Sup. Ct. 2018) (internal citations omitted); *see* CPLR § 321(a). Where the corporate defendant fails to appear by an attorney as directed, a default judgment against it may be properly granted. *Mail Boxes Etc. USA, Inc. v. Higgins*, 281 A.D.2d 176, 721 N.Y.S.2d 524, 524 (1st Dept. 2001)

Generally, a movant seeking default judgment must submit the following materials: (1) proof of service of the summons and complaint or summons with notice; (2) an affidavit of facts constituting the claim and the amount due; and (3) an affidavit showing the default in answering or appearing. CPLR § 3215(f); *see also Woodson v. Mendon Leasing Corp.*, 100 N.Y.2d 62, 70–71 (2003); *see, e.g., Thomas v. Karen’s Body Beautiful, LLC*, 152 N.Y.S.3d 565 (1st Dept. 2021). As set forth herein, the Court finds that Plaintiff has established its entitlement to default judgment.

Here, Plaintiff submits proof of service of (1) the summons and complaint for breach of contract; (2) the Angelin Aff. setting forth Defendant’s breach of the Agreement and the \$5,522,718 amount due; and (3) the affirmation of Robert Knuts (“Knuts Aff.”) attesting to Defendant’s default in failing to appear in this action by not obtaining replacement counsel following the Court’s Decision & Order on Mot. Seq. No. 003. NYSCEF Doc. Nos. 1, 83 (Knuts Aff.), 91 (Knuts Aff.). Thus, the Court is satisfied that Plaintiff has duly and properly served Defendant with the Complaint and the instant motion. Moreover, because Defendant has failed to obtain replacement counsel following the withdrawal of its former counsel and Defendant was on notice that it cannot appear *pro se* as an LLC, Plaintiff has established that Defendant has failed to appear in this action or file an opposition to the instant motion.

Plaintiff also submits sufficient proof of facts constituting its claim against Defendant for breach of the Agreement. Plaintiff submits the underlying July 26, 2019 agreement between Defendant and Alantra (“Alantra Agreement”), whereby Defendant agreed to pay Alantra a Transaction Fee upon the closing of each completed transaction. NYSCEF Doc. No. 84. Specifically, Defendant agreed that the Transaction Fee would be:

equal to the greater of \$1,500,000 or the sum of the following fees: 5.00% of the Transaction Value up to \$20 million, plus; 2.00% of the Transaction Value for the next \$20 million, plus; 3.25% of the Transaction Value for the next \$20 million, plus; 3.25% of the Transaction Value for the next \$20 million, plus; 3.50% of the Transaction Value for the next \$20 million, plus; 3.75% of the remaining balance of the Transaction Value ... 2.25% of the debt commitment amount up to \$20 million, plus; 2.00% of the debt

commitment amount for the next \$20 million, plus; 1.75% of the debt commitment amount above \$40 million.

Alantra Agreement at ¶ 2.3. Defendant also agreed that Alantra would be entitled to a Transaction Fee equal to 2.0% of the Enterprise Value in the event of a merger. *Id.* at ¶ 2.3c. Further, if the Transaction Fee payment is delayed, “interest will accrue on the unpaid balance at the bank prime rate from the day of closing until the receipt of payment.” *Id.* at ¶ 2.7.

Plaintiff further submits the June 1, 2022 Agreement whereby Defendant agreed that Plaintiff would assume Alantra’s obligations and entitlements under the Alantra Agreement and agreed to pay Plaintiff \$20,000 in Due Retainer and an additional \$4,000 per month as a monthly retainer starting on July 1, 2022. NYSCEF Doc. No. 85.

Plaintiff provides proof of its performance thereunder in the form of the Securities and Exchange Commission Registration Statement recognizing the Merger and an invoice for the fee of \$5,522,718.00 (“Success Fee”). NYSCEF Doc. Nos. 87, 90. Plaintiff provides the Total Transaction Value calculated at \$276,135,893.00 for the Merger and the 2% Success Fee calculated at \$5,522,718.00. NYSCEF Doc. No. 89 (Support for Fee Calc.). Moreover, Plaintiff provides a calculation of its retainer fees and expenses amounting to a total sum of \$152,254.00. *Id.* The Success Fee and total retainer fee calculations yield a total sum of \$5,674,972.00. *Id.*

Finally, Plaintiff provides a schedule of damages that sets forth the sum of the Success Fee due (\$5,522,718.00), 9% interest from November 16, 2023, through December 31, 2023 (\$61,279.49), 9% interest from January 1, 2024, through December 31, 2024 (\$498,406.39), 9% interest from January 1, 2025, through December 31, 2025 (\$497,044.62), and 9% interest from January 1, 2026, through February 19, 2026 (\$68,088.30). NYSCEF Doc. No. 98 (Prejudgment Interest Calc.).

Based on the foregoing, Plaintiff has sufficiently demonstrated facts constituting its claim that Defendant defaulted on its obligations under the Agreement, and that Defendant, an LLC, has failed to appear by not retaining replacement counsel as directed by the Court. Defendant has otherwise filed no opposition or request for other relief in connection with the instant motion.

Accordingly, it is hereby

ORDERED that Plaintiff’s motion for default judgment is GRANTED against Defendant; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Plaintiff against Defendant in the amount of \$5,522,718, plus prejudgment interest that has continued to accrue since November 15, 2023 (the date of Defendant’s breach of the Agreement) at the statutory rate of 9% as calculated by the Clerk of the Court, and upon Plaintiff’s e-filing of a Proposed Judgment directed to the County Clerk; and it is further

ORDERED that within ten (10) days of the e-filing of this Decision and Order, Plaintiff shall serve a copy of this Order with notice of entry on Defendant at the last known address via USPS certified mail (return receipt requested); and it is further

ORDERED that the Clerk of the Court shall mark this case as disposed.

The foregoing constitutes the Decision and Order of this Court.

4/14/2026

DATE



ANAR R. PATEL, A.J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE