

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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AUTOMOTIVE FINANCE CORPORATION,

Plaintiff,

-against-

KELLEY ANDREE RAPHAEL and
AUTOSOURCE I, INC.

Defendants.
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FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.

★ SEP 14 2018 ★

BROOKLYN OFFICE

NOT FOR PUBLICATION
MEMORANDUM & ORDER
16-CV-2027 (CBA) (SMG)

AMON, United States District Judge:

In January of 2015, Plaintiff Automotive Finance Corporation and Defendant Autosource I, Inc. entered into a Demand Promissory Note and Security Agreement (the “Note”) in the amount of \$300,000 for floor-plan financing of the Defendants’ car-rental business. (D.E. # 1 at 2.) Defendant Kelley Andree Raphael acted as guarantor of the Note. (D.E. # 1-1 at 15.) By fall of that year, the parties increased the financing limit to \$450,000, and Plaintiff secured a lien on eight of Defendants’ vehicles to use as collateral in the event of default. (D.E. # 1 at 2.) Defendants defaulted on the Note and failed to deliver possession of the eight vehicles. (*Id.* at 3.)

Plaintiff filed this default judgment action in April of 2016. (D.E. # 1 at 1.) After initially appearing, defense counsel withdrew, and Defendants failed to continue to appear. (D.E. # 9 at 1.) (D.E. # 22 at 1.) The Clerk of Court entered a certificate of default, and Plaintiff filed this motion. (D.E. # 41–42.) The Court referred Plaintiff’s motion to the Honorable Steven M. Gold, United States Magistrate Judge, for a Report and Recommendation (“R&R”). Magistrate Judge Gold found that Indiana law governs the Note pursuant to the contract’s choice-of-law provision,

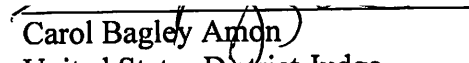
that Defendants are liable for breach of contract, and that Plaintiff is entitled to the relief sought in the Complaint, excepting attorney's fees and "Contract Charges."

No party has objected to the R&R, and the time for doing so has passed. The Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). The Court may accept portions of the R&R so long as there is "no clear error on the face of the record." Jarvis v. N. Am. Globex Fund, L.P., 823 F. Supp. 2d 161, 163 (E.D.N.Y. 2011) (quoting Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003)).

The Court has reviewed the record and, having found no clear error, adopts Magistrate Judge Gold's well-reasoned R&R as the opinion of the Court. Accordingly, the Court grants Plaintiff's motion for default judgment, and the Clerk of Court is directed to close this case.

SO ORDERED.

Dated: September 13, 2018
Brooklyn, New York

s/Carol B. Amon

United States District Judge