

Goodling v Amraly

2018 NY Slip Op 32376(U)

September 17, 2018

Supreme Court, New York County

Docket Number: 151823/2018

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOEL M. COHEN PART IAS MOTION 45
Justice
INDEX NO. 151823/2018
ANTHONY GOODLING, JACQUELINE FULOP
MOTION DATE 08/24/2018
Plaintiff,
MOTION SEQ. NO. 001
- v -
STEFAN AMRALY, TUCKAHOE CAPITAL GROUP LLC,
Defendant. DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19
were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents:

Plaintiffs Anthony Goodling and Jacqueline Fulop move for a default judgment, pursuant to CPLR § 3215, against Defendants Stefan Amraly and Tuckahoe Capital Group LLC for failure to timely appear, answer, or otherwise move with respect to the complaint. For the reasons described below, the motion for default judgment is granted in part against Defendants Amraly and Tuckahoe Capital Group.

Plaintiffs filed a summons and verified complaint with the court on February 22, 2018. (NYSCEF 1). Service was completed on all Defendants on March 26, 2018. (NYSCEF 7, 8, 15). Plaintiffs filed a motion for default judgment against all Defendants on August 8, 2018. (NYSCEF 12, 13). Service of the summons and complaint and the additional mailing of same were properly done in compliance with CPLR § 3215(g)(3)(i) and CPLR § 3215(g)(4)(i). (NYSCEF 15, 16). As such, Plaintiffs have complied with the requirements of CPLR § 3215 and are therefore entitled to a default judgment against Defendants with respect to liability.

In addition to a default judgment on liability, Plaintiffs also seek entry of a money judgment. When, as here, a party seeks a default judgment from the court (rather than from the clerk), CPLR § 3215(b) states, in relevant part: “[t]he court, with or without a jury, may make an assessment or take an account or proof, or may direct a reference.” A court may grant a money judgment without an inquest if the damages sought are for a “sum certain.” *Grinshpun v. Borokhovich*, 100 A.D.3d 551, 552 (1st Dep’t 2012) (“[j]udgment was properly awarded without an inquest since the amount sought was a ‘sum certain.’”) (citing *Transit Graphics v. Arco Distrib.*, 202 A.D.2d 241 (1st Dep’t 1994)).

According to the verified complaint, Plaintiffs are married individuals who loaned Defendant Stefan Amraly \$25,000 by making a payment to Amraly’s company Tuckahoe Capital Group. Defendant Amraly repaid \$10,000 of the loan, and \$15,000 remains outstanding. (Complaint at pp. 2-3, NYSCEF 1). Plaintiffs’ demand for repayment is for a sum certain of \$15,000. Accordingly, the court grants a money judgment in the amount alleged in the verified complaint, \$15,000.

Plaintiffs’ request for interest on the loan is granted, and referred to a Special Referee for an inquest. Plaintiffs have not given any indication as to an interest rate or how interest was calculated. The court directs the parties to an inquest, before a Special Referee, to hear and determine the amount of interest, if any, due to Plaintiffs on the loan.

Plaintiffs’ request for unspecified “reasonable attorneys’ fees” in connection with this litigation, without making any showing as to why Plaintiffs are entitled to those fees or as to the amount of said fees, is denied.

In sum, the court grants the motion for default judgment against Defendants and awards Plaintiffs the sum of \$15,000, as well as costs and disbursements. The court directs the parties to

an inquest, before a Special Referee, for the calculation of interest owed on the loan, if any. To the extent Plaintiffs seek a judgment requiring payment of its attorneys' fees in connection with litigating this action, that request is denied.

Defendants may seek a vacatur of the instant default judgment if they can satisfy the requirements of CPLR § 5015 or CPLR § 317.

Therefore it is:

ORDERED Plaintiffs' Motion for a Default Judgment against Defendants is Granted, and the Clerk of the Court is directed to enter a judgment in favor of Plaintiffs and against Defendants in the sum of \$15,000, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED Plaintiffs' request for interest on the outstanding loan amount is referred to a JHO to hear and determine; and it is further

ORDERED Plaintiffs' request for attorneys' fees is denied; and it is further

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to determine the interest owed on the loan; and it is further

ORDERED that the powers of the JHO/Special Referee to determine shall not be limited further than as set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119 M, 646-386-3028 or spref@courts.state.ny.us) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this Court at www.nycourts.gov/supctmanh at the "Local Rules" link), shall assign this matter to an available Special Referee to determine as specified above; and it is further

ORDERED that plaintiffs' counsel shall serve a copy of this order with notice of entry on defendants within five days and that counsel for plaintiffs shall, after thirty days from service of those papers, submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (which can be accessed at http://www.nycourts.gov/courts/ljd/supctmanh/refpart-infosheet-10-09.pdf) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR § 4318) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and that the parties shall appear for the reference hearing, including with all such witnesses and evidence as they may seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referee's Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue specified above shall proceed from day to day until completion.

This constitutes the Decision and Order of the Court.

HON. JOEL M. COHEN
J.S.C.


JOEL M. COHEN, J.S.C.

9/17/2018
DATE

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input checked="" type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: