

Bay Ridge Fed. Credit Union v AAYAT Corp.
2018 NY Slip Op 32990(U)
November 27, 2018
Supreme Court, New York County
Docket Number: 155091/2018
Judge: William Franc Perry
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. W. FRANC PERRY

PART

Justice

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BAY RIDGE FEDERAL CREDIT UNION,

Plaintiff,

- v -

AAYAT CORP., MOHAMMED BASHAR

Defendant.

INDEX NO. 155091/2018

MOTION DATE 10/03/2018

MOTION SEQ. NO. 001

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13

were read on this motion to/for JUDGMENT - DEFAULT

Plaintiff, BAY RIDGE FEDERAL CREDIT UNION ("Plaintiff"), moves for an order, pursuant to CPLR 3215, granting default judgement against Defendants AAYAT CORP., ("AAYAT") and MOHAMMED ABUL BASHAR ("Bashar") (together, "Defendants"). The motion is submitted without opposition.

BACKGROUND

This action arises out of a loan transaction between Plaintiff and Defendants. According to the Plaintiff, Defendant entered into a Security Agreement (the "Agreement") and Promissory Note (the "Note") with Plaintiff on March 4, 2013, for the amount of \$640,000.00, with interest thereon computed from the date of the Note at the rate of 3.5% per annum. Pursuant to the terms and conditions of the Note, the Loan shall be payable in equal monthly installments of interest only each in the amount of \$3,204.00, commencing on May 1, 2013, and on the first day of each month thereafter through and including April 1, 2016, at which time Defendants were to make a balloon payment of any unpaid principal, accrued interest, and any other loan-related charges.

On or about March 4, 2013, the Bashar executed a Co-Signer's Statement (the "Co-Signers Statement") in further consideration for the Loan, whereby Bashar assumed full responsibility for prompt payment of all amounts due under the Loan.

As an inducement for Plaintiff to grant the Loan, and as collateral security thereof, pursuant to the Security Agreement, AAYAT granted to Plaintiff a security interest in the following properties, assets and rights of AAYAT, and all proceeds and products thereof (hereinafter collectively referred to as the "Collateral"):

"All of the rights, license, title, and interest to NYC Taxi Medallion #2E43, with the rate card, equipment, roof lights, meters, and vehicles used in the debtor's taxicab business, and all substitutions, or replacements thereof, and all proceeds therefrom, and all issued and unissued shares of capital stock in the corporation known as Aayat Corp. and 200 shares of capital stock issued by Aayat Corp. to Mohammed Abul Bashar."

The Collateral specifically includes New York City Taxi & Limousine Commission ("TLC") Medallion #2E43 ("Medallion #2E43") owned by and registered to the AAYAT. On or about March 4, 2013, Plaintiff's security interest in the Collateral was perfected by the filing of a UCC-1 Financing Statement (the "Financing Statement") Statement" with the New York State Department of State (Filing No. 201303045232011).

On or about December 1, 2016, Guarantor executed a Loan Modification Agreement (the "Loan Modification") Modification" whereby the Guarantor modified the balance of the Note for a total balance of \$583,606.05 to be paid at the annual percentage rate (APR) of 3.00% in monthly installments of \$2,504.00 beginning on January 1, 2017.

The Promissory Note, together with the Co-Signer's Statement, the Financing Agreement, the Security Agreement, and the Loan Modification shall collectively be referred to herein as the "Loan Documents." Pursuant to the Loan Documents, upon an Event of Default (as defined in the Note), Plaintiff may declare all of the sums owed under the Loan Documents immediately due and payable in full.

On or about March 12, 2018, Plaintiff, through its attorneys, sent a letter to Defendants (the "Notice of Disposition of Collateral") notifying them that they were in default of their obligations under the Promissory Note and Security Agreement and warning Defendant of Plaintiff's right to redeem before a public auction. Thereafter, New York City Taxicab Medallion No.: 2E43 was sold to Plaintiff, Bay Ridge Federal Credit Union, at a public auction held on March 28, 2018, for the commercially reasonable amount of \$200,000.00.

On May 15, 2018, Plaintiff, through its attorneys, sent a letter to the Defendant (the "Demand Letter") notifying the Defendant that it was in default of its obligations under the Loan Documents as a result of its continued failure to pay when due any installment required to be made under the Loan Documents, and demanding the immediate payment in full of the outstanding principal balance of the Loan, together with accrued and unpaid interest thereon, late fees, and default interest.

According to the Plaintiff, the Defendants have defaulted under the Loan Documents due to, among other things, inter alia, its failure to: (i) remit to the Plaintiff the monies due thereunder; (ii) comply with or to perform any other term, obligation, covenant or condition under the Security Agreement or in any of the related documents or to comply with or to perform any term, obligation, covenants or conditioned contained in any other agreement between the Plaintiff and Defendants; and (iii) the Defendants' failure to remit payment in full pursuant to the demand letter sent by the Plaintiff to the Defendant dated May 15, 2018 (the "Demand Letter").

As a result of the default by the Defendants, the Plaintiff claims they are entitled to collect the principal amount of \$575,172.56, plus interest accrued thereon through and including December 8, 2017, in the amount of \$6,087.24, plus late fees owing as of December 8, 2017, in the amount of \$2,754.40, for a total of \$584,014.30 together with default interest accruing thereon at \$47.93 per diem, and all other charges accruing under the Loan Documents from December 8, 2017, to the date of entry of the judgment herein, plus reasonable Attorneys' fees, costs and expenses. The Plaintiff acknowledges that total amount due and payable to present date will be decreased by \$200,000.00 to represent the collateral, New York City Taxicab Medallion No.: 2E43 that was sold at auction.

DISCUSSION

On a motion for leave to enter a default judgment, a plaintiff is required to submit: (1) proof of service of the summons and complaint on the defendant; (2) proof of the merits of the subject claims; and (3) proof of the defendant's default in answering or appearing (SMROF II 2012-I Tr. v Tella, 139 AD3d 599 [1st Dept 2016]). "Given that in default proceedings the defendant has failed to appear and the plaintiff does not have the benefit of discovery, the affidavit or verified complaint need only allege enough facts to enable a court to determine that a viable cause of action exists" (Bianchi v Empire City Subway Co., 2016 WL 1083912 [Sup Ct, New York County 2016], quoting Woodson v. Mendon Leasing Corp., 100 N.Y.2d 62, 70-71 [2003]).

This action was commenced with the filing of summons and complaint on May 31, 2018, and the service of a summons and complaint upon the defendant on August 15, 2018. Defendant has not answered the summons and complaint or otherwise appeared in this action and is currently in default. Plaintiffs' motion is supported by a copy of the relevant loan agreements, proof of Defendants' default under their terms, and proof of service and notice to the Plaintiff. Such documents were provided via a duly notarized affidavit. Defendants have not opposed Plaintiff's motion or otherwise appeared in this action.

The interest rate provided for in the Loan is 2% of the aggregated unpaid principal balance of the Loan. During the period from December 8, 2017, through March 28, 2018, the unpaid balance of the Loan was \$575,172.56, and thus the interest due during that period is \$31.52 per diem. During the period from March 29, 2018, through the date of entry of judgment, the unpaid balance of the Loan was \$375,172.56, and thus the interest due during that period is \$20.56.

Accordingly, on reading and filing of the following papers submitted to the Court: the summons and complaint and proof of service thereof, the notice required by CPLR 3215(g)(3) and proof of mailing thereof, the Notice of Motion for Default Judgment, dated October 3, 2018, the Affidavit of Ricardo Delpratt, sworn to on August 15, 2018, and upon all pleadings and proceedings heretofore had herein, it is hereby

ORDERED, that the motion for default judgment against Defendant Aayat Corp. and Co-Defendant Mohammed Abul Bashar be granted, and it is further

ORDERED, that the Clerk is directed to enter judgment in favor of the Plaintiff against Defendant in the principal amount of \$584,014.30, less \$200,000 representing certain collateral already sold by Plaintiff, for a total amount of \$384,014.30, plus interest at the rate of \$31.52 per diem from the date of December 8, 2017 through the date of March 28, 2018, and interest at the rate of \$20.56 per diem from the date of March 29, 2018 through the date of entry of judgment by the Clerk, as calculated by the clerk, with costs and disbursements as taxed by the Clerk upon submission by Plaintiff of an appropriate bill of costs; and it is further

ORDERED that Plaintiff's demand for attorneys' fees, costs and expenses is severed and referred to a special referee to hear and determine the amount of reasonable attorneys' fees, costs and expenses due to Plaintiff; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) 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/supetmanh at the "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that counsel for Plaintiff shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186), or e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practicable 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 counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules); and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts; and it is further

NYSCEF DOC. NO. 14

RECEIVED NYSCEF: 11/30/2018

Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the Court.

11/27/2018
DATE

WP
HON. W. FRANC PERRY, III
J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE