

Melrose Credit Union v Nadelman
2018 NY Slip Op 33437(U)
November 7, 2018
Supreme Court, Queens County
Docket Number: 711618 2017
Judge: Marguerite A. Grays
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE MARGUERITE A. GRAYS IAS PART 4
Justice

MELROSE CREDIT UNION, X

Index
Number 711618 2017

Plaintiff(s)

-against-

Motion
Date June 12, 2018

GENNADY NADELMAN, YURY TRESKUNOV,
GENOLG TRANSIT INC., TAKI GOOD TAXI,
LLC, IDLE TAXI CAB, LLC, DERBY
TRANSPORT, LLC, APACHE ARROW CAB,
LLC, RUNDLE MEN TAXI, LLC, GEYR TAXI
INC., EMISSION GOOD TAXI, LLC,
CATERPILLAR CAB, LLC, CAT TAXI CAB, LLC,
GOLD DUST CAB, LLC, BIG RIVER TAXI, LLC,
DOG TAXI CAB LLC, CITY TAXI CAB, LLC,
BROAD OAK CAB, LLC, TAXI FOR ALL, LLC
and BLACK FOREST TAXI, LLC.

Motion Cal. No. 28

Motion Seq. No. 1

Defendant(s)

The following papers numbered EF 96 - EF 224 read on this motion by plaintiff Melrose Credit Union (plaintiff) for: (1) summary judgment pursuant to CPLR §3212, against defendants Gennady Nadelman, Emission Good Taxi, LLC, Caterpillar Cab, LLC, Cat Taxi Cab, LLC, Gold Dust Cab, LLC, Big River Taxi, LLC, Dog Taxi Cab, LLC, City Taxi Cab, LLC, Broad Oak Cab, LLC, Taxi For All, LLC, and Black Forest Taxi, LLC (collectively referred to as the Nadelman defendants); (2) for summary judgment against defendants Yury Treskunov, Taki Good Taxi, LLC, Idle Taxi Cab, LLC, Derby Transport, LLC, Apache Arrow Cab, LLC, Rundle Men Taxi, LLC, Geyr Taxi Inc. (collectively referred to as the Treskunov defendants), for a “default judgment pursuant to CPLR §3212 in favor of [p]laintiff against defendant Genolg Transit Inc. (‘Genolg’, together with the Nadelman [d]efendants and [the] Treskunov [d]efendants,” defendants”); (3) for dismissal of the counterclaim asserted against it by the Treskunov defendants, or in the alternative, for severance of that counterclaim pursuant to CPLR §603 and (4) “upon the issuance of summary and default judgment,” for a money judgment against Genolg, the Nadelman defendants, and the Treskunov defendants on the first, fourth, seventh, tenth, thirteenth, sixteenth, nineteenth, twenty-second, twenty-fifth, twenty-eighth, thirty-first, thirty-fourth,

thirty-seventh, fortieth, forty-third, forty-sixth and forty-ninth causes of action set forth in the complaint, and for an Order of Replevin pursuant to UCC § 9-609 (a)(1) and (b)(1) on the fifty-second cause of action set forth in the complaint; and notice of cross-motion by the Treskunov defendants for an Order pursuant to CPLR §3025 (b), granting them leave to amend their answer; and notice of cross-motion by Genolg, Emission Good Taxi, LLC, Caterpillar Cab, LLC, Cat Taxi Cab, LLC, Gold Dust Cab, LLC, Big River Taxi, LLC, Dog Taxi Cab, LLC, City Taxi Cab, LLC, Broad Oak Cab, LLC, Taxi For All, LLC, and Black Forest Taxi, LLC, for an order pursuant to CPLR §5015, vacating the default against Genolg and permitting Genolg to interpose an answer.

	<u>Papers</u> <u>Numbered</u>
Notice of Motion - Affidavits - Exhibits	EF 96-165
Notices of Cross Motion - Affidavits - Exhibit.....	EF 173-179, 190-194
Answering Affidavits - Exhibits	EF 172, 180-189,
Reply Affidavits	EF 195-202, 223-224

Upon the foregoing papers it is ordered that the motion and cross-motion are determined as follows:

This is an action sounding in breach of contract, account stated, unjust enrichment, injunction and replevin. Plaintiff has alleged that the Nadelman defendants, the Treskunov defendants, and Genolg executed and delivered to plaintiff seventeen notes for loans and also executed and delivered to plaintiff security agreements on the seventeen loans, which included New York Taxi Medallion numbers 1L27, 1L28, 2R22, 2R23, 2R24, 2R25, 2R26, 2R27, 2R28, 2R29, 2R30, 2R31, 2R32, 2R33, 2R34, 2R35, 2R36, 2R37, 2R38, 2R39, 2R60, 2R61, 4V16, 4V17, 6V43, 6V44, 6V45, 6V46, 6V47, 6V48, 6V49, 6V50, 6V51, and 6V52, along with the respective rate cards and vehicles, as consideration for the notes. Plaintiff has alleged that it filed UCC financing statements for each loan in the office of the Secretary of State of the State of New York.

Plaintiff has further alleged that the Nadelman defendants, the Treskunov defendants, and Genolg defaulted in making payments on the seventeen loans, the repayment of which were, thus, accelerated, and that the Nadelman defendants, the Treskunov defendants, and Genolg have breached their payment obligations under the seventeen notes. Following plaintiff's commencement of the instant action, the Treskunov defendants and the Nadelman

- defendants appeared and filed answers to the complaint. However, Genolg failed to appear or answer in the action.

The Treskunov defendants have now moved for an order pursuant to CPLR §3025 (b), granting them leave to amend their answer. “Leave to amend pleadings should be freely given provided that the amendment is not palpably insufficient, does not prejudice or surprise the opposing party, and is not patently devoid of merit” (*Gitlin v Chirinkin*, 60 AD3d 901 [2009]; see *Thomsen v Suffolk County Police Dept.*, 50 AD3d 1015, 1017 [2008]). “A determination whether to grant such leave is within the Supreme Court’s broad discretion” (*Gitlin v Chirinkin*, 60 AD3d at 902).

Upon careful consideration of the record, in light of the early stage of the proceedings in this matter, the fact that disclosure has yet to take place, and the court’s determination that the proposed amended pleading is not palpably insufficient, does not prejudice or surprise the parties, and is not patently devoid of merit, the Treskunov defendants are entitled to leave to amend their answer. The Treskunov defendants’ amended answer, annexed as exhibit B to their cross-motion is hereby deemed served.

Taking into consideration the above determination, the new pleading which contains a counterclaim and, thus, requires a new reply by plaintiff (CPLR §3025[d]; see generally *Mendrzycki v Cricchio*, 58 AD3d 171, 174–175 [2008]; *Taub v Schon*, 148 AD3d 1203, 1205 [2017]; *Stella v Stella*, 92 AD2d 589 [1983]; *Grossman v Laurence Handprints-N.J., Inc.*, 90 AD2d 95, 98 [1982]; see also Patrick M. Connors, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR C3025:21), and the complete lack of disclosure, summary relief would be premature and inappropriate at this time. Therefore, plaintiff is not entitled to summary relief against the Treskunov defendants or the Nadelman defendants, or to the dismissal or severance of the Treskunov defendants’ counterclaim at this juncture.

To the extent that, in its notice of motion, plaintiff has also sought a “default judgment pursuant to CPLR §3212 ... against defendant Genolg Transit Inc. (‘Genolg’, together with the Nadelman [d]efendants and [the] Treskunov [d]efendants”) and “upon the issuance of summary and default judgment,” for a money judgment against Genolg, the Nadelman defendants and the Treskunov defendants, it appears that plaintiff is seeking a default judgment. However, plaintiff has failed to adequately address this branch of its motion and thus is not entitled to the relief sought.

By cross-motion, Genolg, Emission Good Taxi, LLC, Caterpillar Cab, LLC, Cat Taxi Cab, LLC, Gold Dust Cab, LLC, Big River Taxi, LLC, Dog Taxi Cab, LLC, City Taxi Cab, LLC, Broad Oak Cab, LLC, Taxi For All, LLC, and Black Forest Taxi, LLC, have sought an order pursuant to CPLR §5015, vacating Genolg’s default in appearing or answering in

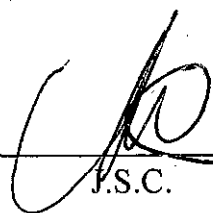
the action and permitting Genolg to interpose an answer to the complaint. The court notes that no default judgment has yet been entered against Genolg. "To extend the time to answer the complaint and to compel the plaintiff to accept an untimely answer as timely, a defendant must provide a reasonable excuse for the delay and demonstrate a potentially meritorious defense to the action" (*Mannino Dev., Inc. v. Linares*, 117 AD3d 995, 995 [2d Dept 2014]). "The determination of what constitutes a reasonable excuse lies within the sound discretion of the Supreme Court" (*id.*, quoting *Maspeth Fed. Sav. & Loan Assn. v McGown*, 77 AD3d 889, 890 [2010]).

In support of its cross-motion, through the affirmation of counsel as well as through the affidavit of Gennady Nadelman, Genolg has adequately demonstrated that it had a reasonable excuse for the delay in answering and a potentially meritorious defense to the action. Therefore, Genolg, Emission Good Taxi, LLC, Caterpillar Cab, LLC, Cat Taxi Cab, LLC, Gold Dust Cab, LLC, Big River Taxi, LLC, Dog Taxi Cab, LLC, City Taxi Cab, LLC, Broad Oak Cab, LLC, Taxi For All, LLC, and Black Forest Taxi, LLC, have satisfied their burden on their cross motion. No party has sufficiently raised opposition to this cross motion. Therefore, Genolg is entitled to vacatur of its default in appearing or answering in this action and the proposed amended verified answer, which has been annexed as exhibit C to the cross-motion papers, on behalf of Genolg is hereby deemed served.

Accordingly, the cross-motion by the Treskunov defendants pursuant to CPLR §3025 (b), for leave to amend their answer is granted and the amended answer is deemed served. Plaintiff's motion is denied in its entirety. The cross-motion by Genolg, Emission Good Taxi, LLC, Caterpillar Cab, LLC, Cat Taxi Cab, LLC, Gold Dust Cab, LLC, Big River Taxi, LLC, Dog Taxi Cab, LLC, City Taxi Cab, LLC, Broad Oak Cab, LLC, Taxi For All, LLC, and Black Forest Taxi, LLC, for an Order pursuant to CPLR §5015, vacating Genolg's default in appearing and answering and to permit Genolg to interpose an answer is granted, and the Genolg's answer is deemed served.

Dated:

NOV 07 2018



J.S.C.

FILED
NOV 29 2018
COUNTY CLERK
QUEENS COUNTY