

**Cruz v Castro**

2020 NY Slip Op 33309(U)

October 7, 2020

Supreme Court, New York County

Docket Number: 652231/2019

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART IAS MOTION 14

Justice

-----X

JOSE CRUZ

Plaintiff,

- v -

ANGEL CASTRO,

Defendant.

-----X

INDEX NO. 652231/2019
MOTION DATE 10/05/2020
MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 50, 51, 52, 55, 56 were read on this motion to/for JUDGMENT - DEFAULT.

The motion for a default judgment by plaintiff is granted.

Background

This case arises out of a \$100,000 loan plaintiff gave to defendant. Defendant agreed to make monthly interest payments of \$1,000 until the principal balance was less than \$35,000. At that point the interest payments would decrease to \$350 per month for the life of the loan. Defendant also agreed to make quarterly payments of no less than \$5,000 towards the balance of the loan and that the loan would be paid back by February 20, 2020.

Defendant made 21 months of interest payments from March 2017 through November 2018 and \$25,000 in principal payments. Defendant admits he did not make payments starting in the last two quarters of 2018 and contends there is a principal balance of \$75,000 still owed. The

complicating factor is that defendant was plaintiff's attorney for two matters: a real estate transaction and a personal injury (dog bite) case.

In a previous decision issued by this Court, plaintiff's claims for unjust enrichment and professional negligence were dismissed and the Court directed defendant to answer the amended complaint pursuant to the CPLR (NYSCEF Doc. No. 42).

Because defendant never filed an answer to the amended complaint, plaintiff now seeks a default judgment.

In opposition, defendant does not seek more time to submit an answer or claim any excuse for not complying with this Court's clear order. Rather, defendant opposes the motion by claiming that plaintiff's motion is made in bad faith. He contends that the parties reached a settlement in court and it was agreed that the parties would write up the settlement after the court appearance. Defendant insists that plaintiff backed out of the settlement and the reasons for rejection of the settlement are now moot given that plaintiff's personal injury matter was apparently settled for \$300,000.

Defendant claims that he has seen plaintiff near his home, experienced threats from plaintiff and decided to move his family. He claims that the parties have appeared for subsequent conferences and he has asked for more time to file an answer, a request to which plaintiff did not object. Defendant argues that plaintiff has not sent any demands for an answer and claims that pursuant to executive orders by Governor Cuomo, his time to answer has not run.

The Court grants plaintiff's motion. The fact is that this Court ordered defendant to file an answer pursuant to a motion in May 2020 and he still has not filed an answer. He apparently had the time to file an opposition to this motion but could not find the time to file a proposed answer along with it.

Defendant failed to cite a specific executive order that could extend his time to answer. And this Court is unaware of an executive order that could permit a defendant to just ignore a deadline to file an answer he knew he had to file. The fact is that parties are currently permitted to make motions and plaintiff did so here. Instead of filing a proposed answer or seeking an adjournment until he could file an answer, defendant decided to draft an opposition and attach an exhibit but not a proposed pleading. The purpose of the executive orders related to the ongoing pandemic is to provide parties with more time to litigate and ensure that their rights are not waived; it was not intended a shield for party to unjustifiably delay a case. The Court also observes that the docket does not contain a stipulation or an order stating that defendant's time to answer was extended.

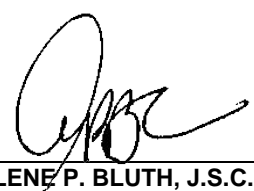
While this Court would have preferred for the parties to settle this case, the parties were unable to reach an agreement. The Court cannot force parties to settle nor can it assign blame for the failure to settle. Once it became clear that a resolution was not going to happen, the Court issued a decision in defendant's motion to dismiss and defendant was directed to file an answer with respect to the remaining claims. Defendant did not do so and has not raised a sufficient reason why the Court should not issue a default judgment.

With respect to the alleged threats by plaintiff (NYSCEF Doc. No. 56), this is not a criminal court nor is it the proper venue for defendant to file criminal complaints. If defendant decides that speaking with law enforcement is appropriate, he of course may do so but nothing defendant submitted here is a defense to plaintiff's motion.

Accordingly, it is hereby

ORDERED that the motion for a default judgment is granted and plaintiff is directed to file a note of inquest on or before November 17, 2020.

10/7/2020  
DATE

  
ARLENE P. BLUTH, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	DENIED
			<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT