

Japp v Kabbage, Inc.
2020 NY Slip Op 33311(U)
October 7, 2020
Supreme Court, New York County
Docket Number: 654036/2019
Judge: Arthur F. Engoron
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARTHUR F. ENGORON PART IAS MOTION 37EFM

Justice

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CHRISTINE JAPP,

Plaintiff,

- v -

KABBAGE, INC, PAYPAL, INC, PAYPAL HOLDINGS, INC,
FUNDING CIRCLE HOLDINGS PLC, FUNDING CIRCLE
PARTNERS, LP, QUARTERSPOT, INC.,AMERICAN
EXPRESS CO., BRUCE BURNS, JONATHAN RUBIN,
DAVID SKLAREW, C. STEPHEN KREIGH, JAY COLEN,
LEONARD SETTEMBRINI, DOROTHY HARBECK,
CHRISTIAN CHENEAU, CHERRYSTONE STAMP CENTER
INC.,SCHUYLER J. RUMSEY PHILATELIC AUCTIONS,
INC.,DANIEL F. KELLEHER AUCTIONS, LLC,DAVID
FELDMAN, HARVEY BENNETT, SPINK USA, BANK OF
AMERICA CORP, SPINK USA, INC.,JP MORGAN CHASE
& CO., J.P. MORGAN CHASE BANK, N.A., DISCOVER
BANK, CIRCLE LENDING, LLC,DLI ASSETS BRAVO,
LLC,LG FUNDING LLC,WELLS FARGO & CO., VISA U.S.A.
INC, EBAY INC.,WEILL CORNELL MEDICAL COLLEGE,
LENDING CLUB CORP., CAPITAL ONE FINANCIAL
CORP., NEW YORK STATE DEPARTMENT OF TAXATION
AND FINANCE, UNITED STATES INTERNAL REVENUE
SERVICE

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 76, 77, 78, 79, 80, 81

were read on this motion to/for JUDGMENT - DEFAULT.

Upon the foregoing documents, it is

Upon the foregoing documents, plaintiff's requests (1) for a default judgment in her favor and against the Non-Answering Defendants; (2) to approve plaintiff's settlement agreement with defendants PayPal Inc.; PayPal Holdings, Inc.; and Cherrystone Stamp Center Inc. d/b/a Cherrystone Auctions, Inc.; (3) to direct plaintiff to dispose of the subject Stamp Inventory as the subject agreement outlines; and (4) to release plaintiff of liability arising from the Stamp Inventory and the Non-Appearing Defendants' claims, are hereby granted, on default and on the merits, for the reasons stated hereinbelow.

**DECISION + ORDER ON
MOTION**

Background

On February 8, 2019, the Surrogate's Court of New York County appointed plaintiff, Christine Japp, as Executrix of the Estate of Michael S. Japp a/k/a Michael Japp, deceased (her husband's estate), which features a stamp inventory (the "Stamp Inventory"). According to plaintiff, the estate is insolvent. The decedent's former company, Anglo American Appraisal Services, Inc. ("AAASI"), waived all rights, title, or interest in the Stamp Inventory (NYSCEF Doc. 77).

As of July 10, 2019, all of the defendants made and/or plaintiff reasonably anticipated that they would make a claim as to certain assets in the subject estate: Kabbage Inc.; PayPal Inc.; PayPal Holdings, Inc.; Funding Circle Holdings PLC; Funding Circle Partners, LP; Quarterspot, Inc.; American Express Co.; Bruce Burns; Jonathan Rubin; David Sklarew; C. Stephen Kreigh; Jay Colen; Leonard Settembrini; Dorothy Harbeck; Christian Cheneau; Cherrystone Stamp Center Inc. d/b/a Cherrystone Auctions, Inc.; Schuyler J. Rumsey Philatelic Auctions Inc.; Daniel F. Kelleher Auctions, LLC; David Feldman; Harvey Bennett; Bank of America Corp.; Spink USA; JP Morgan Chase & Co.; J.P. Morgan Chase Bank, N.A.; Discover Bank; Circle Lending LLC; DLI Assets Bravo, LLC; LG Funding LLC; Wells Fargo & Co.; Visa, U.S.A. Inc.; EBay Inc.; Weill Cornell Medical College; Lending Club Corp.; New York State Department of Taxation and Finance; and United States Internal Revenue Service.

Although plaintiff claims that the exact value of the Stamp Inventory is difficult to determine, it apparently constitutes the "only asset of potentially substantial value available to satisfy some or all of the defendants' creditor claims." Apparently, plaintiff is unable to determine defendants' rights and interests to the Stamp Inventory, "exposing her to potential multiple liability." Additionally, plaintiff asserts that she does not hold a claim to the Stamp Inventory and is ready, willing, and able to deliver the Stamp Inventory to the defendant(s) that this Court finds is/are entitled to it. (NYSCEF Doc. 77).

The estate has subordinated its interest in the Stamp Inventory in favor of PayPal, Inc. and PayPal Holdings, Inc. (collectively, "PayPal") and Cherrystone Stamp Center, Inc. ("Cherrystone"), while reserving interest to such amounts, "as it may recover following the sale of the Stamp Inventory to defray its administrative expenses" (NYSCEF Doc. 77, at 4).

On July 10, 2019, plaintiff commenced the instant CPLR 1006(a) and 3001 action to determine and declare defendants' rights, if any, to certain assets (the Stamp Inventory) in the estate's possession and control (NYSCEF Doc. 1 and 2). Between August 15, 2019 and March 19, 2020, plaintiff served process upon defendants and mailed second notices (NYSCEF Doc. 80 and 81).

On July 31, 2019, this Court stayed Cherry Stone v Anglo American, Index No. 650271/2019, and Funding Circle v Anglo American, Index No. 155214/2019, until August 8, 2019 (NYSCEF Doc. 23). This Court also granted the request for instructions and ordered plaintiff, in her capacity as the subject estate's executrix, to retain physical possession of the Stamp Inventory (NYSCEF Doc. 23).

Plaintiff now moves, pursuant to CPLR 3215, for this Court to [1] grant a default judgment in favor of plaintiff and against "interpleader defendants," namely, Kabbage Inc.; Funding Circle Partners, LP; American Express Co.; Bruce Burns; Jonathan Rubin; David Sklarew; C. Stephen

Kreigh; Jay Colen; Leonard Settembrini; Dorothy Harbeck; Christian Cheneau; Schuyler J. Rumsey Philatelic Auctions Inc.; Daniel F. Kelleher Auctions, LLC; Harvey Bennett; Bank of America Corp.; Spink USA; JP Morgan Chase & Co.; J.P. Morgan Chase Bank, N.A.; Discover Bank; Circle Lending LLC; DLI Assets Bravo, LLC; LG Funding LLC; Wells Fargo & Co.; Visa, U.S.A. Inc.; Lending Club Corp.; New York State Department of Taxation and Finance; and United States Internal Revenue Service (collectively, the “Non-Appearing Defendants”); [2] approve a settlement agreement between plaintiff, PayPal, and Cherrystone; [3] direct plaintiff to dispose of the Stamp Inventory in accordance with the subject agreement within fifteen days of the filing of a notice of entry granting the instant motion; [4] release plaintiff of all liability arising from the Stamp Inventory; and [5] award plaintiff “expenses, costs, and disbursements, inclusive of attorneys’ fees, to be charged against the subject matter of this lawsuit (the Stamp Inventory), in the amount of the distribution, if any, that the plaintiff may receive from the net proceeds of the sale to be conducted by Cherrystone pursuant to the Agreement” (NYSCEF Doc. 76).

Discussion

Plaintiff has established that she is entitled to a default judgment in her favor and against the Non-Appearing Defendants by complying with CPLR 3215(f) by submitting, inter alia, the following: the subject summons and verified complaint; the subject affidavits of service and second notice; and the June 29, 2020 affirmation of Mark B. Brenner, plaintiff’s counsel.

The Non-Appearing Defendants have failed to oppose or otherwise respond to the instant motion, and their time to do so has expired. Thus, plaintiff is entitled to a default judgment in her favor and against the Non-Appearing Defendants.

This Court has reviewed the subject settlement agreement and hereby approves it (NYSCEF Doc. 78).

Conclusion

Thus, for the reasons stated herein, the motion of plaintiff, Christine Japp, as Executrix of the Estate of Michael S. Japp a/k/a Michael Japp, deceased, pursuant to CPLR 3215, for a default judgment in her favor and against defendants, Kabbage Inc.; Funding Circle Partners, LP; American Express Co.; Bruce Burns; Jonathan Rubin; David Sklarew; C. Stephen Kreigh; Jay Colen; Leonard Settembrini; Dorothy Harbeck; Christian Cheneau; Schuyler J. Rumsey Philatelic Auctions Inc.; Daniel F. Kelleher Auctions, LLC; Harvey Bennett; Bank of America Corp.; Spink USA; JP Morgan Chase & Co.; J.P. Morgan Chase Bank, N.A.; Discover Bank; Circle Lending LLC; DLI Assets Bravo, LLC; LG Funding LLC; Wells Fargo & Co.; Visa, U.S.A. Inc.; Lending Club Corp.; New York State Department of Taxation and Finance; and United States Internal Revenue Service (the “Non-Appearing Defendants”) is hereby granted on the merits and on default.

This Court hereby approves the settlement agreement between plaintiff and defendants PayPal Inc.; PayPal Holdings, Inc.; and Cherrystone Stamp Center Inc. d/b/a Cherrystone Auctions, Inc. This Court hereby directs plaintiff to dispose of the Stamp Inventory in accordance with the agreement that plaintiff attached to her moving papers (NYSCEF Doc. 78) within fifteen days of the filing of a notice of entry of this Decision and Order. The subject agreement states,

essentially, that Cherrystone Stamp Center Inc. d/b/a Cherrystone Auctions, Inc. will take immediate possession of the Stamp Inventory and will sell the remainder of the Stamp Inventory according to a protocol that Cherrystone determines to be suitable for achieving maximum market value; Cherrystone will provide an accounting of each Market Lot Sale, and each Market Lot Sale payment will be made to Gallet Dreyer & Berkey, LLP, less a sales commission specified in the subject agreement, to be held in trust for distribution as outlined in the subject agreement.

This Court hereby releases plaintiff of all liability arising from the Stamp Inventory, contingent upon her complying with this Decision and Order. The Clerk is hereby directed to enter judgment accordingly.

Plaintiff's request for attorney's fees is hereby severed, and plaintiff may obtain an inquest into said fees by presenting the Clerk with a Note of Issue with Notice of Inquest, a copy of this Decision and Order, and payment of any necessary fees.



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10/7/2020
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

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

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

APPLICATION:

CHECK IF APPROPRIATE: