

IMS Fund, LLC v Jay Durgama LLC
2021 NY Slip Op 31831(U)
May 27, 2021
Supreme Court, New York County
Docket Number: 654863/2020
Judge: Louis L. Nock
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LOUIS L. NOCK PART IAS MOTION 38EFM

Justice

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IMS FUND, LLC,

Plaintiff,

- v -

JAY DURGAMA LLC d/b/a FAIRFIELD GROCERIES; and
GIRABEN PATEL,

Defendant.

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INDEX NO.	654863/2020
MOTION DATE	
MOTION SEQ. NO.	001
DECISION + ORDER ON MOTION	

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16

were read on this motion to/for JUDGMENT - MONEY

Upon the foregoing documents, the motion of plaintiff IMS Fund, LLC (“Plaintiff”) for entry of default judgment against defendants Jay Durgama LLC d/b/a Fairfield Groceries and Giraben Patel (together, “Defendants”) is granted in part, in accord with the following memorandum decision.

Plaintiff commenced this action to recover amounts owed by Defendants for defendant Jay Durgama LLC d/b/a Fairfield Groceries’ (“Fairfield Groceries”) breach of two agreements for the purchase of future receivables (the “Agreement”), as guaranteed by defendant Joseph Giraben Patel (“Patel”). A plaintiff that seeks entry of a default judgment upon a defendant’s failure to answer or appear in an action must demonstrate its entitlement to entry of a default judgment by submitting proof of the summons and complaint upon the defendant, proof of the facts constituting its claim, and proof of default (CPLR 3215). In support of its motion, Plaintiff has submitted, *inter alia*, an affidavit of Kate Halyuk, Account Manager for Plaintiff, with

exhibits thereto, and an affirmation of Plaintiff's counsel, Boris Yankovich, with exhibits thereto. In the affidavit, Halyuk attests to the making of the Agreement, the guaranty by Patel, to Fairfield Groceries' default under the terms of the Agreement on March 3, 2020, and to the current amount owed. This is sufficient to demonstrate the facts supporting Plaintiff's claim. To demonstrate proof of service upon the Defendants, Yankovich attests that Patel was served with process on October 28, 2020 by substitute service upon his twenty-three-year-old daughter at his home or place of abode and mailing thereafter. An affidavit of service that reflects the substituted service is attached to the affirmation. This is sufficient to demonstrate service upon Patel. Yankovich also attests to Patel's default by failing to appear in the action. As such, Plaintiff has demonstrated its entitlement to entry of a default judgment against Patel.

Yankovich further attests that Fairfield Groceries was served with process on November 2, 2020 "by delivering a copy of the Summons and Complaint to Ashley (Store Attendant), at the Defendant's actual place of business" (Yankovich aff ¶ 6). The address of the place of business is the same as the address for Fairfield Groceries indicated on the Agreement. The accompanying affidavit of service contains the following notation regarding service of process:

Additional Comments:

1) Unsuccessful Attempt: Oct 28, 2020, 2:23 pm EDT at COMPANY: 1515 PICKENS HIGHWAY, WALHALLA, SC 29691 Work Place attempt. Talked to manager Ann, she told me the owner was out of town. She also said that she would refuse to take the documents.

2) Successful Attempt: Nov 2, 2020, 6:30 pm EST at COMPANY: 1515 PICKENS HIGHWAY, WALHALLA, SC 29691 received by JAY DURGAMA LLC d/b/a FAIRFIELD GROCERIES; and GIRABEN PATEL. Ethnicity: Caucasian; Gender Female; Hair Blond; Work Place serve. Served to Ashley the cashier and store attendant.

(NYSCEF Doc 13). CPLR 311-a provides the following relevant guidance:

(a) Service of process on any domestic or foreign limited liability company shall be made by delivering a copy personally to (i) any member of the limited liability

company in this state, if the management of the limited liability company is vested in its members, (ii) any manager of the limited liability company in this state, if the management of the limited liability company is vested in one or more managers, (iii) to any other agent authorized by appointment to receive process, or (iv) to any other person designated by the limited liability company to receive process, in the manner provided by law for service of a summons as if such person was a defendant. Service of process upon a limited liability company may also be made pursuant to article three of the limited liability company law.

The affidavit of service which indicates the summons and complaint were served on a “cashier and store attendant” at a grocery store is not sufficient to demonstrate that service of process was made in conformity with CPLR 311-a, particularly where the affidavit of service does not indicate the individual served was authorized to receive service and where the manager of the store previously refused service. Therefore, Plaintiff has not demonstrated its entitlement to entry of a default judgment against Fairfield Groceries, and that portion of the motion is denied.

Accordingly, it is

ORDERED that the motion for entry of a default judgment is granted in part, and the Clerk of the Court is directed to enter judgment in favor of plaintiff IMS Fund, LLC and against defendant Giraben Patel in the amount of \$22,954.48, with interest at the statutory rate from March 3, 2020, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

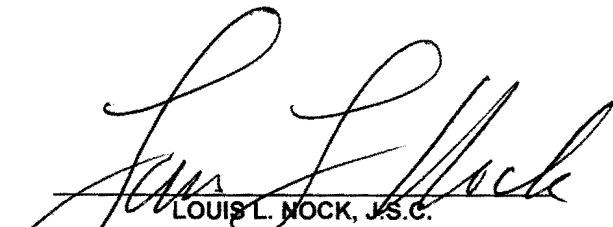
ORDERED that the motion is denied with respect to defendant Jay Durgama LLC d/b/a Fairfield Groceries, and the action shall continue against this defendant; and it is further

ORDERED that a status conference shall be held in this matter on August 18, 2021 at

2:00 p.m., to be conducted by Microsoft Teams appearance arranged by the court.

This constitutes the Decision and Order of the court.

5/27/2021
DATE


LOUIS L. NOCK, J.S.C.

CHECK ONE:

CASE DISPOSED

DENIED

NON-FINAL DISPOSITION

OTHER

APPLICATION:

GRANTED

SETTLE ORDER

GRANTED IN PART

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE