

| |
|--|
| Partridge v Authentic Brands Group |
| 2021 NY Slip Op 32219(U) |
| November 8, 2021 |
| Supreme Court, New York County |
| Docket Number: Index No. 655400/2020 |
| Judge: Andrea Masley |
| Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service. |
| This opinion is uncorrected and not selected for official publication. |

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

-----X

| | | |
|-------------------------|-----------------------------------|--------------------|
| NICHOLAS PARTRIDGE, | INDEX NO. | <u>655400/2020</u> |
| Plaintiff, | MOTION DATE | _____ |
| - v - | MOTION SEQ. NO. | <u>001</u> |
| AUTHENTIC BRANDS GROUP, | DECISION + ORDER ON MOTION | |
| Defendant. | | |

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 6, 8, 18, 25, 26, 31, 32

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

Plaintiff Nicholas Partridge moves, pursuant to CPLR 3215, for a default judgment against defendant Authentic Brands Group, LLC. On October 14, 2020, plaintiff initiated this “Intellectual Property” action against defendant. (NYSCEF Doc. No. [NYSCEF] 1, Complaint at 1.) Defendant “is a brand development, marketing, and entertainment company headquartered in New York City that owns a portfolio of over 50 global media, entertainment, and lifestyle brands including Aéropostale, Brooks Brothers, Thomasville, Sports Illustrated, Forever 21, Nautica, Juicy Couture, Brooks Brothers Inc., Lucky Brand Dungarees LLC, Barneys New York, Marilyn Monroe, Elvis Presley, Muhammad Ali, Shaquille O’Neil, Spyder, Tretorn, and Eddie Bauer.” (NYSCEF 29, Clarke¹ aff ¶4.) Defendant cross-moves² (i) pursuant to CPLR

¹ Kevin P. Clarke is the Chief Financial Officer of Authentic Brands Group, LLC.

² Counsel is directed to follow the Uniform Rules for Trial Courts (22 NYCRR). Specifically, §202.8(c) provides “[a]ffidavits shall be for a statement of the relevant facts, and briefs shall be for a statement of the relevant law.” Counsel is also directed to read

5015(a)(4) to vacate its default and pursuant to CPLR 3211(a)(8) to dismiss this action. Alternatively, defendant moves (ii) pursuant to CPLR 5015(a)(1) to vacate its default and pursuant to CPLR 3012(d) to extend its time to answer.

“[C]ourts try to afford unrepresented litigants some leeway in prosecuting their actions . . . [but] their entitlement to relief is not thereby enlarged.” (See *Kent v Kent*, 29 AD3d 123, 130-131 [1st Dept 2006] [citation omitted].) In light of plaintiff’s unrepresented status, to resolve this motion, the court considers all of plaintiff’s filings, many of which are designated “Notice of Discovery and Inspection,”³ but are sworn to by plaintiff. The court’s primary concern is to understand the nature of plaintiff’s complaint.

Plaintiff’s Allegations

The dispute involves either a business proposition or a song written by plaintiff in 2015 entitled “Big.” (NYSCEF 1, Complaint at 1.) Plaintiff alleges that he wrote “Big” in memory of his friend who was shot and killed by Dekalb County, Georgia Police. (*Id.*) The song also alludes to the late boxer Muhammed Ali and uses the term “ego.” (*Id.*; NYSCEF 8, Notice of Discovery and Inspection at 4-5.) Two years later in late 2017, Sports Illustrated hosted its annual “Sports Illustrated Sportsperson of the Year Show,” which honored Colin Kaepernick with the Muhammad Ali Legacy Award for his social activism. (NYSCEF 13, Partridge Aff at 3/7.) In 2020, plaintiff filed this action. (NYSCEF 1 and 2, Summons and Complaint.) Plaintiff’s primary contention seems to

and follow this court’s rules. (“Clark Aff.”), ¶2; Exhibit A (Job Posting for Front Desk Coordinator)” without a NYSCEF number is useless.

³ The page numbers cited refer to the pagination generated by NYSCEF.

be that his song was improperly used as the inspiration behind the 2017 Sports Illustrated Sportsperson of the Year Show. (*Id.*; NYSCEF 6, Notice of Discovery and Inspection at 1/5⁴; NYSCEF 8, Notice of Discovery and Inspection at 4-5⁵.) Celebrity Beyoncé Knowles-Carter presented the award to Kaepernick, which plaintiff contends proves that plaintiff's intellectual property rights were harmed. (NYSCEF 6, Notice of Discovery and Inspection at 1/5.) Plaintiff admits that in 2008 Beyonce released her song entitled "Ego." (NYSCEF 1, Complaint at 1.) However, plaintiff denies that there is a relationship between her song and plaintiff's use of the word "ego" in his 2015 song. (*Id.*)⁶ Finally, plaintiff alleges that "I never . . . gave this business proposition to anyone and realized [Defendant] used me." (*Id.*)

A. Default Judgment Legal Standard

"On a motion for a default judgment under CPLR 3215 based upon a failure to answer the complaint, a plaintiff demonstrates entitlement to a default judgment against a defendant by submitting: (1) proof of service of the summons and complaint; (2) proof of the facts constituting its claim; and (3) proof of the defendant's default in answering or appearing." (*Medina v Sheng Hui Realty LLC*, 2018 WL 2136441, *6-7 [Sup Ct, NY County 2018] [citations omitted].) Since defendant does not challenge its failure to

⁴"The attached pictures are the evidence of my Complaint of Intellectual Property, for the simple fact that I never met no client or have I signed any business Sports contract with any company. . . . My evidence is I can prove my venture from when this song occurred before Mr. Colin Kaepernick was awarded or even took a knee."

⁵"This Discovery documents where the Song is located and is Dated when the song was issued inside the Google Gmail Portal".

⁶"I talked about having a Ego, and was referring that to my Ego and not knowing that 'Beyonce Knowles Carter' had a song called 'Ego' that came out back in 2008. Beyonce Knowles Carter presented Colin Kaepernick with the award and for his behalf, this was all set up for him from me."

answer until May 18, 2021, only the first two elements are addressed. (NYSCEF 25, Berschadsky aff ¶15.)

Defendant contends that it is a limited liability company. (NYSCEF 29, Clarke aff ¶1.) Service upon a limited liability company is to be made 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” (CPLR 311-a [a].)

Here, service was attempted upon “Daria Szaroleta/Receptionist” on January 6, 2021. (NYSCEF 18, Affidavit of Service at 1.) Defendant challenges service as improper since it is organized as a limited liability company. (See NYSCEF 25, Berschadsky aff ¶ 1; NYSCEF 26, Clarke aff ¶ 1.) Defendant denies that Szaroleta is an authorized agent to receive process of service, as she is not a manager, and is not a member of the LLC. (NYSCEF 26, Clarke aff ¶ 2.) Plaintiff does not challenge defendant’s corporate structure.⁷ Rather, plaintiff objects to defendant’s failure to offer a statement from Szaroleta.

Service upon an LLC is ineffective by serving a front desk receptionist. (*Brooklyn Fed. Sav. Bank v Crosstown W. 28 LLC*, 2010 WL 5141734, *4-5 [Sup Ct, Kings County 2010] [finding lack of personal jurisdiction over defendant, a limited liability company,

⁷ Defendant fails to state where or when it was incorporated. The court takes judicial notice of the records of the New York Secretary of State, which establish that Authentic Brands LLC (DOS ID 5375402) initially filed in New York as an LLC on July 13, 2018.

when the process of service was served upon receptionist].) Therefore, the court cannot exercise jurisdiction over defendant.

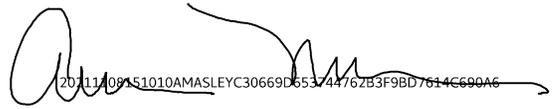
As to the second element for a default judgment, plaintiff fails to identify a cognizable legal claim, the harm defendant allegedly caused or a link between the alleged events and plaintiff's damages. "Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action. The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts." (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994] [citations omitted].) For example, was plaintiff's song used without his permission which would constitute conversion. (*See Sporn v MCA Records, Inc.*, 58 NY2d 482 [1983].) Since plaintiff denies any agreement with defendant, if plaintiff is alleging unjust enrichment of some sort, he "must allege that: (1) the [defendant] was enriched, (2) at [plaintiff's] expense, and (3) that it is against equity and good conscience to permit the [defendant] to retain what is sought to be recovered"; the claimant need also establish a "sufficiently close relationship with the other party" that, though not necessarily one of contractual privity, "could have caused reliance or inducement." (*See Schroeder v Pinterest Inc.*, 133 AD3d 12, 26-27 [1st Dept 2015] [internal quotation marks omitted].) Under any legal claim, plaintiff's complaint is deficient because plaintiff fails to explain the connection between the 2017 Sports Illustrated awards ceremony honoring Kaepernick and his song, "Big" and the harm caused to him. The court also notes plaintiff's procedural failure to comply with CPLR 3014 with plain and concise statements in consecutively numbered paragraphs. Therefore, plaintiff's motion is denied.

As to the cross motion, defendant argues that plaintiff's action should be dismissed because the court cannot exercise jurisdiction over it under CPLR 3211(a)(8) due to improper service. (NYSCEF 25 at ¶ 9.) As discussed above, plaintiff's service is deficient, and thus, defendant's cross motion is granted.⁸

Accordingly, it is

ORDERED that plaintiff's motion for a default judgment is denied, and it is further

ORDERED that defendant's cross-motion is granted to the extent that the action is dismissed.



11/8/2021
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE

⁸ Defendant asks the court to vacate the default judgment. However, the court has yet to enter a default judgment, and thus, cannot consider the requested relief.