

Eagle Eye Advance LLC v Reinv78 Group LLC

2023 NY Slip Op 33939(U)

November 4, 2023

Supreme Court, New York County

Docket Number: Index No. 450592/2023

Judge: Andrea Masley

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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

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EAGLE EYE ADVANCE LLC,

Plaintiff,

- v -

REINV78 GROUP LLC, BAY HARBOR ISLAND 1 LLC,
WESTSIDE AVENTURA 1 LLC, BAY HARBOR TH1 LLC,
REINV74 GROUP LLC, OWL GROUP INVESTMENTS
LLC, LUCIA LEBOVICH, and MICHAEL LEBOVICH,

Defendants.

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INDEX NO. 450592/2023

MOTION DATE _____

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 111, 112, 113, 114, 115, 116, 117, 118, 119, 138, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 194, 198

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

In motion seq. no. 004, plaintiff moves, pursuant to CPLR 3215 (a), for a default judgment against defendants Reinv78 Group LLC, Reinv74 Group LLC, and Owl Group Investments LLC (collectively, Reinv Defendants). The motion is unopposed.¹

“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

¹ Defendants Bay Harbor Island 1 LLC, Westside Aventura 1 LLC and Bay Harbor TH 1 LLC (Bay Harbor Defendants) filed an opposition brief but only “in order to make sure the record does not reflect any mischaracterizations of the Bay Harbor Defendants,” specifically, the Bay Harbor Defendants assert that they are not parties to the agreement at issue. (NYSCEF 192, Memo in Opp at 4.) The Bay Harbor Defendants have since been dismissed on that ground. (NYSCEF 202, Decision and Order [mot. seq. no. 002].)

appearing.” (*Medina v Sheng Hui Realty LLC*, 2018 WL 2136441, *6-7 [Sup Ct, NY County 2018] [citations omitted].) “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].)

Proof of Service

Plaintiff has submitted proof that Integra was served with summons, complaint and notice of electronic filing. (NYSCEF 119, aff of service.) Plaintiff also complied with the additional service requirements of CPLR 3215 (g)(4)(i). (*Id.*)

Proof of Claim

CPLR 3215 (f) requires a plaintiff to submit “proof of the facts constituting the claim, the default and the amount due ... by affidavit made by the party.” “Where a verified complaint has been served, it may be used as the affidavit of the facts constituting the claim and the amount due; in such case, an affidavit as to the default shall be made by the party’s attorney.” (CPLR 3215 [f].) Here, plaintiff’s complaint is verified by Benjamin Aryeh, plaintiff’s Chief Executive Office. Aryeh’s affidavit will not be considered as it is not notarized.²

In its verified complaint, plaintiff asserts claims against the Reinv Defendants for breach of a merchant agreement. Plaintiff alleges that it purchased a percentage of defendant Reinv78 Group LLC’s future accounts receivable up to the sum of \$1,595,000 for a price of \$1.1 million. (NYSCEF 118, Verified Complaint ¶ 10.) Plaintiff was

² On October 25, 2023, Governor Hochul signed a law, effective January 1, 2024, allowing any person to file an affirmation under penalty of perjury in lieu of a notarized affidavit in New York State civil actions.

authorized to collect the receivables via an ACH electronic debit from Reinv78 Group LLC's bank account; however, Reinv78 Group LLC placed a stop payment on plaintiff's debits, changing the designated bank account without plaintiff's permission in violation of the agreement. (*Id.* ¶¶ 12-14.) Plaintiff also submits a copy of the merchant agreement. (NYSCEF 113.) The merchant agreement is between plaintiff and defendant Reinv78 Group LLC. Plaintiff has submitted sufficient proof of its claim against Reinv78 Group LLC.

As to the other Reinv Defendants, they did not execute the agreement and subject themselves to jurisdiction in New York. Thus, they are dismissed.

Proof of Default

Plaintiff has also sufficiently proved that Reinv78 Group LLC is default. On April 4, 2023, the court issued an order relieving Barclay Damon LLP as Reinv78 Group LLC's counsel, stating "[t]he corporate defendants can only appear by counsel (CPLR 321)" and that, "[i]f the corporate defendants fail to appear by counsel, it may constitute a default." (NYSCEF 66, Decision and Order at 2.). The court ordered Reinv78 Group LLC to "appoint a substitute attorney within 14 days of this order." (*Id.*) Since this court's order, there has been no appearance by counsel and this corporate party remains unrepresented in violation of CPLR 321.

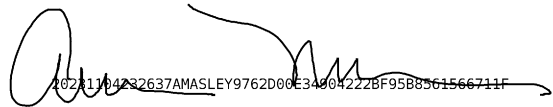
Accordingly, it is

ORDERED that plaintiff's motion for a default judgment is granted as to Reinv78 Group LLC; and it is further

ORDERED that, pursuant to the merchant, plaintiff is entitled to attorneys' fees and shall submit (e-file and email) an affirmation of services, attorney bios, and invoices for the court's review within 7 days of this decision or waived; and it is further

ORDERED that plaintiff is to e-file a proposed judgment against Reinv78 Group LLC, as well as email (SFC-Part48@nycourts.gov) a copy in Microsoft Word; and it is further

ORDERED that Reinv74 Group LLC, and Owl Group Investments LLC are dismissed.



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11/4/2023

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE