

**Planet Home Lending, LLC v Polaris Home Loans,
LLC**

2024 NY Slip Op 31085(U)

March 29, 2024

Supreme Court, New York County

Docket Number: Index No. 651500/2023

Judge: Mary V. Rosado

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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
NEW YORK COUNTY**

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

-----X

PLANET HOME LENDING, LLC

Plaintiff,

- v -

POLARIS HOME LOANS, LLC,

Defendant.

-----X

INDEX NO. 651500/2023

MOTION DATE 03/23/2024

MOTION SEQ. NO. 1

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 1) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14

were read on this motion to/for JUDGMENT - DEFAULT

Plaintiff, Planet Home Lending, LLC ("Plaintiff") moves for an Order pursuant to CPLR § 3215(a) granting a default judgment against Defendant Polaris Home Loans, LLC ("Defendant") in the amount of \$364,141.05, plus Plaintiff's reasonable attorneys' fees and costs in the amount of \$2,064.28, plus pre- and post-judgment interest accruing at the statutory rate. Upon the foregoing documents, there being no opposition and good cause having been shown, Plaintiff motion for an Order granting default judgment against Defendant and in favor of Plaintiff, is granted.

An applicant for default judgment against a defendant must submit: (i) proof of service of the summons and complaint, (ii) proof of the facts constituting the claim, and (iii) proof of the defaulting defendant's failure to answer or appear (PV Holding Corp v AB Quality Health Supply Corp, 189 AD3d 645 [1st Dept 2020]; CPLR § 3215[a]). An affidavit or verified complaint submitted in support of a motion for default judgment "need only allege enough facts

to enable a court to determine that a viable cause of action exists" (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). In undertaking this review, the Court is mindful that "defaulters are deemed to have admitted all factual allegations in the complaint and all reasonable inferences that flow from them" (*Id.*, at 71; *State Farm Mut. Auto. Ins. Co. v AK Glob. Supply Corp.*, 203 AD3d 556 [1st Dept 2022]). Where a default judgment is awarded, the judgment shall not exceed in amount or differ in type from that demanded in the complaint (CPLR § 3215[b]).

Here, the Court finds that Plaintiff has satisfied proof of service by attaching an affidavit of service evidencing service of the Summons and Complaint upon Defendant by service upon the company's registered agent on April 10, 2023 (NYSCEF Doc. 8).

Defendant has failed to file an answer to Plaintiff's Complaint or otherwise appear despite its time for doing so having expired. Plaintiff has satisfied its burden of proving the facts constituting its claim by submitting an Affidavit of Merit by Plaintiff's Senior Vice President of Correspondent Operations of Plaintiff sworn to December 12, 2023 (NYSCEF Doc. 9).

Plaintiff's proof establishes *prima facie* the necessary elements of a breach of contract claim: (1) the existence of a contract, (2) the plaintiff's performance under the contract; (3) the defendants' breach of that contract, and (4) resulting damages (*Reiter Resources, Inc. v Gilmartin*, 176 AD3d 617, 618 [1st Dept 2019]).

Here, Plaintiff's Affidavit of Merit establishes that Defendant entered into a Correspondent Program Loan Purchase Agreement ("Agreement") that incorporated Plaintiff's Seller Guide ("Guide"), wherein Defendant agreed to sell, and Plaintiff agreed to buy, loans secured by residential real property.

Accordingly, it is

ORDERED, that Plaintiff Planet Home Lending, LLC's motion for default judgment against Defendant Polaris Home Loans, LLC is granted, without opposition, as to liability on Plaintiff's cause of action for breach of contract; and it is further

ORDERED, that within 20 days after this decision and order is uploaded to NYSCEF, Plaintiff shall serve a copy of this order on the Clerk of the Court (60 Centre Street, Room 141 B), who shall enter judgment in favor of Plaintiff and against Defendant, in the sum of \$364,141.05, plus costs and statutory interest from November 25, 2022 (representing 30 days from Plaintiff's second demand for repurchase dated October 26, 2022) through entry of judgment, as calculated by the Clerk of the Court, together with costs and disbursements as taxed by the Clerk of the Court, upon submission of an appropriate bill of costs; and it is further

ORDERED, that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to hear and determine at an inquest, on the issue of the damages, including attorneys' fees, caused to Plaintiff by the breach of contract by Defendant Polaris Home Loans, LLC; and it is further

ORDERED, that within 20 days from the date of this order, Plaintiff shall serve a copy of this order with notice of entry upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is directed, upon the filing of a note of issue and a certificate of readiness and the payment of proper fees, if any, to place this action on the calendar of the JHO or Special Referee's Part for an inquest on damages and attorneys' fees as directed above; and it is further

ORDERED, that within 20 days of entry, Plaintiff shall serve a copy of this Decision and Order, with notice of entry, upon Defendant Polaris Home Loans, LLC; and it is further

ORDERED, that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

3/29/2024

DATE

Mary V Rosado JSC

HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE