

De Zaio v Rosenbloom
2020 NY Slip Op 30767(U)
March 12, 2020
Supreme Court, New York County
Docket Number: 653238/2018
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

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MICHAEL DE ZAIO,

Plaintiff,

- v -

LEE ROSENBLOOM, NY57 D/B/A PLAZA GALLERY, NEW YORK GALLERY, PLAZA APPRAISAL SERVICES, INC.,DOE CORPORATIONS AND/OR ENTITIES

Defendant.

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INDEX NO. 653238/2018
MOTION DATE 03/12/2020
MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 77

were read on this motion to/for JUDGMENT - DEFAULT

Lee Rosenbloom is the owner of NY57, d/b/a as Plaza Gallery (NY57), a Manhattan-based company engaged in the business of buying and appraising jewelry and collectibles, including vintage watches. On October 16, 2017, Michael De Zaio brought six Tiffany Rolex watches into Mr. Rosenbloom's gallery in response to an advertisement he heard on the radio soliciting the purchase of "all things Tiffany." Mr. Rosenbloom examined the watches and inquired as to how much Mr. De Zaio was asking for each piece. Mr. De Zaio said that he would take \$40,000 for all six watches. Mr. Rosenbloom replied that he was not in a position to purchase all six but believed he had a customer who would be interested in one of the watches in particular, the Tiffany Submariner. Mr. Rosenbloom took pictures of the watches and told Mr. De Zaio to call back the next day. When Mr. De Zaio called the following day, Mr. Rosenbloom informed him that he had shown a picture of the Tiffany Submariner to his customer, and the customer was very interested in purchasing it. He asked Mr. De Zaio to bring the watch back to the gallery.

On October 23rd, 2017, Mr. De Zaio brought the Tiffany Submariner back to NY57. Mr. Rosenbloom told Mr. De Zaio that his customer would pay \$15,000 for the watch. Mr. De Zaio alleges that he rejected this offer, indicating that he wanted \$25,000, and that he might consider \$20,000 if it could be sold quickly. Mr. De Zaio left the watch with Mr. Rosenbloom and Mr. Rosenbloom gave him a receipt. Mr. De Zaio alleges that he looked at the receipt and noticed that it purported to transfer title to the “New York Gallery,” and it stated that the watch had been “paid in full,” which was not accurate. Mr. De Zaio communicated his concerns regarding the receipt to Mr. Rosenbloom. He alleges that Mr. Rosenbloom agreed to cross out certain language on the receipt regarding the transfer of title and the notation that the watch had been paid in full, but the price of \$25,000 was not altered.

Over the next few weeks, Mr. De Zaio called several times to inquire as to the status of the watch. Mr. Rosenblum indicated that the customer would only purchase it for \$15,000. After multiple calls, Mr. Rosenblum conceded that the customer was actually in possession of the Tiffany Submariner. Mr. Rosenblum told Mr. De Zaio that the customer would return the watch if Mr. De Zaio would agree to sell the customer one of his other Tiffany Rolexes. Mr. De Zaio agreed.

On December 6, 2017, Mr. De Zaio returned to NY57 and sold Mr. Rosenbloom a second Tiffany Rolex (**Rolex #2**) for \$3,000. Mr. Rosenbloom indicated that he would have the Tiffany Submariner back by the end of the day. The receipt for the Rolex #2 states: “[a]gree to return Tiffany Sub.” After making several calls to Mr. Rosenbloom on December 7th and 8th without being able to reach him, Mr. De Zaio returned to NY57 on December 8th with two of his business

associates and demanded the return of the Tiffany Submariner. First, Mr. Rosenbloom indicated that the costumer never returned it, but after being questioned about it, Mr. Rosenbloom indicated that in fact the customer had returned the Tiffany Submariner, but he had since misplaced it. Mr. Rosenbloom never returned the Tiffany Submariner or the money to Mr. De Zaio.

Mr. De Zaio commenced this action by filing a summons and complaint on June 27, 2018, asserting causes of action for breach of contract, fraudulent inducement, and conversion (NYSCEF Doc. No. 2). Mr. Rosenbloom failed to timely file an answer or otherwise appear and Mr. De Zaio moved for default judgment (NYSCEF Doc. No. 23). Mr. Rosenbloom subsequently requested an opportunity to file an answer and Mr. Dezaio withdrew the motion (NYSCEF Doc. No. 27). By order dated February 26, 2019, the court directed Mr. Rosenbloom to interpose an answer within 20 days and further directed NY57 to retain counsel and interpose an answer within 30 days (NYSCEF Doc. No. 26). A preliminary conference was scheduled for April 24, 2019. Mr. Rosenbloom and NY57 failed to appear. The court issued an order stating “[t]he Defendants having failed to answer in the time provided by the court, and having failed to appear for the preliminary conference, scheduled for this date, Plaintiff is entitled to seek all appropriate relief” (NYSCEF Doc. No. 29).

Mr. De Zaio then moved for a default judgment pursuant to CPLR § 3215 and Mr. Rosenbloom moved to vacate the default judgment. By decision and order, dated May 13, 2019, the court denied Mr. Rosenbloom’s motion as procedurally improper because there had been no default judgment entered against him (NYSCEF Doc. No. 50). The court gave Mr. Rosenbloom “one

final chance to file his answer within 14 days of this order, and retain counsel to file an answer on behalf of [NY57] within 14 days of this order” (*id.*). The court stated that “[i]f the defendants fail to file an answer, then this court will hold them in default” (*id.*). Mr. Rosenbloom filed an answer on June 26, 2019 (NYSCEF Doc. No. 51). On July 6, 2019, Mr. De Zaio filed an amended complaint pursuant to CPLR § 3025 (a), adding additional “Corporate Doe” defendants and a cause of action pursuant to the Racketeer Influenced Corrupt Organizations Act (**RIICO**) (NYSCEF Doc. No. 54). Neither Mr. Rosenbloom nor the corporate defendants have filed an answer or otherwise moved to dismiss the amended complaint.

A party may move for default judgment pursuant to CPLR § 3215 “[w]hen a defendant has failed to appear, plead or proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed” (CPLR § 3215 [a]). A party in default is “deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them” (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). A party moving for default judgment must file (i) proof of service of the summons and complaint, (ii) proof of the facts constituting the claim, and (iii) proof of the default and the amount due (CPLR § 3215 [f]).

Here, Mr. De Zaio has filed proof of proper service of the summons and complaint and the amended complaint (NYSCEF Doc. No. 61), the affidavits of Mr. De Zaio (NYSCEF Doc. No. 58), and one of his business associates, Michael Aitken (NYSCEF Doc. No. 65), testifying as to the underlying facts alleged in the amended complaint, a list of the Tiffany Rolexes with pictures and details for each watch (NYSCEF Doc. No. 62), a copy of the receipt for the Tiffany

Submariner, which lists the price at \$25,000 (NYSCEF Doc. No. 63), and proof of the default in that the defendants have failed file an answer, appear, or move to dismiss the amended complaint, failed to appear at the preliminary conference, and failed to comply with multiple court orders.

In opposition to the motion, Mr. Rosenbloom submits a letter, dated October 7, 2019, stating, in sum and substance, that (i) the allegations in the complaint are false and irrelevant, (ii) Mr. De Zaio altered the receipt to state that the price was \$25,000 instead of \$15,000 and that the market value of the watch, which he claims was in poor condition, was actually between \$5,000 and \$8,000, and (iii) that he contacted an unidentified person at an unspecified corporation regarding this matter and is awaiting a response (NYSCEF Doc. No. 75). At oral argument, Mr. Rosenbloom argued that in fact Mr. De Zaio created a second receipt reflecting the higher price of \$25,000.

As an initial matter, the court notes that Mr. Rosenbloom does not dispute liability, he does not deny any of the facts concerning the defendants' default in this case, he does not deny that he failed to file an answer to the complaint or retain counsel for NY57 despite having multiple opportunities to do so, or that he failed to appear for the preliminary conference, or that he failed to file an answer to the amended complaint or otherwise appear or move to dismiss.

Significantly, he does not even deny that he owes Mr. De Zaio money for the Tiffany Submariner that somehow disappeared; he merely contends that Mr. De Zaio altered the receipt or produced a second receipt and disputes the actual market value of the watch without offering any supporting evidence. Mr. Rosenbloom simply fails to raise any legitimate grounds for denial

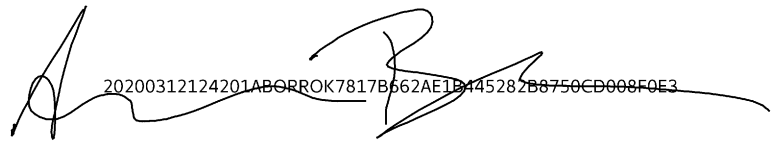
the motion as to liability. Accordingly, Mr. De Zaio's, motion for default judgment is granted as to liability.

However, in as much as Mr. Rosenbloom argues that the original receipt stated a price of \$15,000 for the Tiffany Submariner and Mr. De Zaio created a second receipt falsely stating a price of \$25,000, the matter shall be set down for an inquest to determine the appropriate amount of damages and attorneys' fees.

Therefore, it is

ORDERED that Michael De Zaio's motion for default judgment against Lee Rosenbloom, NY57 d/b/a Plaza Gallery, New York Gallery, Plaza Appraisal Services, Inc., is granted as to liability; and it is further

ORDERED that, upon the filing by the plaintiff with the General Clerk's Office (60 Centre Street, Room 119) of a copy of this Order with notice of entry and a note of issue, and the payment of the fee therefor, the Clerk shall place this matter upon the inquest calendar for an assessment of damages and attorneys' fees.



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3/12/2020

DATE

ANDREW BORROK, 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