



## City Natl. Bank v Bleecker St. Records, Inc.

2014 NY Slip Op 30061(U) (2014) | Cited 0 times | New York Supreme Court | January 2, 2014

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..... j:: 0::: 0 0 ::!:: LI.. .SUPREME COURT OF THE OF YORK YORK COUNTY

tlON. JOAN J.S.C.

Index CITY NATIONAL

STREET RECORDS, INC. SEQUENCE NUMBER 001 DEFAULT PART\_/(\_\_ ..

INDEX MOTION MOTION SEQ.

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01/13/2014 INDEX NO. 652350/2012 NYSCEF DOC. NO. 32 RECEIVED NYSCEF: 01/13/2014

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A. PRESENT:

( Number: 652350/2012 ' BANK vs. BLEECKER : JUDGEMENT Justice

NO.----- DATE---- NO. ---

The papers, numbered 1 to \_\_ , were read on this motion to/for----- Notice of Motion/Order to  
Cause - Affidavits - Exhibits Answering Affidavits - Exhibits----- Replying No(s). \_\_\_\_\_



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No(s). ----- No(s). -----

1. .... ; ..... 2. .... 3. ....

. REFERENCE [\* 1] SUPREME COURT OF OF YORK

COUNTY OF YORK: PART

ON

RECORDS, MUSIC,

JOAN INDE)( NO. 652350112

Street

"defendants"),

2006,

Street

2011; 30, 2012,

2010, \$12,500. THE STATE NEW NEW 11

-----)( CITY NA TI AL BANK,

Plaintiff,

-against-

BLEECKER STREET INC., BLEECKER STREET INC., MATTHEW WHITE and BARBARA WHITE,

Defendants. -----)(

A. MADDEN, J.:

In this is an action for breach of a commercial credit card agreement, a personal guaranty

and two promissory notes, plaintiff moves for a default judgment against three of the four named



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defendants, Bleecker Records, Inc., Bleecker Street Music Inc. and Matthew White

(collectively based on their failure to appear and answer. 1 Defendants appear by

counsel, oppose the motion and submit a proposed answer.

In support of the motion, plaintiff relies on documents showing that in January

Matthew White as president and owner of Bleecker Street Music Inc. applied for a MasterCard

business credit card; Bleecker Music Inc. defaulted on the credit card payments in

November and as of March a total amount of \$19,058.11 was due and owing.

As part of same credit card application, White executed a personal guaranty. Also, in March

Bleecker Street Records, Inc. executed a promissory note for Plaintiff alleges

that Bleecker Street Records, Inc. defaulted on its obligations under the promissory note by not

1 Plaintiff filed a stipulation of discontinuance as to the fourth defendant, Barbara White. [\* 2] 2012, 2012,

2010, \$12,500 10, 2011,

"is

existence."

Plaintiff

2012,

Plaintiff

"simply incredible," Plaintiffs

"numerous times,"

October 2012 August 2013,



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2012, paying principal and accrued interest that became due on March 1, and as of May 15, the amount due was \$7,675.78. In conjunction with the promissory note, White executed a Commercial Guaranty dated March 9, for the loan, and on March he executed a second Commercial Guaranty.

In opposition, White submits an affidavit and an attorney's affirmation asserting that he has a meritorious defense and an reasonable excuse for his default. As to a meritorious defense, White provides sworn statements that he did not sign any of the foregoing agreements, he did not give anyone else the authority to sign the agreements, and he had no knowledge of the agreements. As to a reasonable excuse for not timely answering the complaint, White states that he was engaged in efforts to investigate the allegations, and find an attorney to represent the corporate defendants. White also argues that plaintiff will not be prejudiced if he is permitted to answer, and that he will be greatly prejudiced if he is not permitted to do so. White further states that one of the corporate defendants, Blecker Street Records, Inc., dissolved and is no longer in

In reply, plaintiff argues that defendants have not demonstrated a reasonable excuse for the delay or a meritorious defense to the action. notes that defendants were served on July 18, by in-hand delivery to White, and White admits he received the summons and complaint. objects that White's excuse that he was investigating the matter and looking for an attorney is in view of the 13-month delay. counsel states that he spoke with :White including telephone conversations in August and and he advised White that unless defendants answered by



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September 19, plaintiff would move for a default judgment. Notably, plaintiff not make  
2 [\* 3] 2013.

"bald assertion"

See

(Pt 2012);

LLP 2011); Singh

2007); Prime

2006). Public

See Pagan 50 265·(1 2008); 33th

Street 306 2005).

CPLR

See 2009);

2008); Pagan the instant motion on until July 26, Plaintiff argues that since defendants have not made out a reasonable excuse, the court need consider whether they have a meritorious defense, and in any event, White submits no evidence to support his contentions that he neither knew about nor signed the agreements. Plaintiff also argues that White's affidavit is self-serving, and that a of forgery is not enough to raise an issue as to the authenticity of the documents.

As a general rule, a defendant opposing a motion for a default judgment must demonstrate a reasonable excuse for not answering and a meritorious defense to the action.

Zwicker v. Emigrant Mortgage Company, Inc, 91 AD3d 443 Dept Morrison Cohen



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v. Fink, 81 AD3d 467 (1st Dept v. Gladys Towncars, Inc, 42 AD3d 313 (1st Dept ICBC Broadcast Holdings-NY, Inc v. Time Advertising, Inc, 26 AD3d 239 (1st Dept policy, however, favors the resolution of cases on the merits, and courts have broad discretion to grant relief from pleading defaults where the defaulting party has a meritorious defense, the default was not willful and the opposing party is not prejudiced by the delay. v. Four Thirty Realty LLC, AD3d 1st Dept Hesel's West Corp. v. Gotham Construction Co., LLC, 14 AD3d (1st Dept In determining a motion for leave to serve a late answer pursuant to 3012(d), the court considers a number of factors including the length of defendant's delay, the excuse offered for the delay, the absence or presence of willfulness, the of prejudice to plaintiff, the potential merits of the defenses, and the public policy favoring the resolution of disputes on their merits. Cirillo v. Macy's, Inc, 61AD3d538 (1st Dept Jones v. 414 Equities LLC, 57 AD3d 65, 81 (1st Dept v. Four Thirty Realty LLC, supra. Where as here, no default order or judgment has been entered, a showing of the potentially meritorious nature of the 3 [\* 4] CPLR 3012( 570 1' 1 2011 209 2002).

Plaintiffs Popular, NY3d (2004) defenses is not an essential component of d) relief. See Empire Healthchoice Assurance, Inc. v. Lester, 81 AD3d ( 1st Dept ); Jones v. 414 Equities LLC, supra; DeMarco v. Wyndham International, Inc., 299 AD2d (1st Dept



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Applying the foregoing standards, the court concludes that defendants should be permitted to answer, so this matter can be resolved on the merits. Even if defendants have not provided a compelling excuse, nothing in the record shows or suggests that the delay willful, and plaintiff has not demonstrated any prejudice as a result of the delay. Moreover, based on White's sworn statements that he neither signed, authorized nor had knowledge of the agreements on which this action is based, defendants have demonstrated the existence of a potentially meritorious defense of forgery. reliance on *Banco N.A. v. Victory Taxi Management, Inc.*, 1381 is misplaced, as that case involves the proof necessary to defeat a motion for summary judgment when defendant is seeking to raise an issue of fact as to the authenticity of a signature.

Thus, under the circumstances presented, where plaintiff has not been prejudiced by the delay and the delay was not willful, and in view of the public policy favoring the resolution of cases on the merits, the court in its discretion finds that defendants Bleecker Street Records, Inc., Bleecker Street Music, Inc. and Matthew White shall be permitted to answer.

Accordingly, it is

ORDERED that plaintiffs motion for a default judgment against defendants Bleecker Street Records, Inc., Bleecker Street Music, Inc. and Matthew White is denied; and it is further ORDERED that the default by defendants Bleecker Street Records, Inc., Bleecker Street Music, Inc. and Matthew White, in serving a timely answer is vacated, and the proposed answer 4 [\* 5] 30, 2014, 9:30 Part 60 Street.

A.MAUDEN J.S.C. annexed to their opposition papers is deemed served upon service of a copy of



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this order with

notice of entry; and it is further

ORDERED that the parties are directed to appear for a preliminary conference on January

at am, 11, Room 351, Centre

ENTER:

5 [\* 6]

