

STATE OF NEW YORK
SUPREME COURT
DISCOVER BANK,

ULSTER COUNTY

Plaintiff,

-against-

Decision and Order
Index No.: EF2020-9

KENNETH KROM AKA KENNETH H. KROM,

Defendant.

Supreme Court, Ulster County
Motion Return Date: February 10, 2022

Present: Julian D. Schreibman, JSC

Appearances:

Zwicker & Associates, P.C.
Attorneys for Plaintiff
100 Corporate Woods, Suite 230
Rochester, New York 14623
By: Joseph M. Jackling, Esq.

Schreibman, J.:

Plaintiff commenced this action to recover \$12,592.75 it alleges are due and owing as a result of defendant's default in repayment under the terms of the parties' loan agreement. Defendant was personally served with the summons and complaint in January 2020. He has not answered and his time within which to do so expired on February 5, 2020. By notice of motion dated December 27, 2021, plaintiff brought the instant application for a default judgment.

Plaintiff has properly supported its motion with proof of service, proof of defendant's default and proof of the facts of its claim. Its motion must nevertheless be denied. A party seeking a default must do so within one year after the default occurs. (CPLR § 3215 [c]). Where, as here, the plaintiff fails to do so, §3215 [c] directs the Court to dismiss the complaint unless sufficient cause is shown why it should not be dismissed. Plaintiff candidly acknowledges that its motion was filed 97 days after the expiration of the one-year period, inclusive of the tolling period allowed

by former Governor Cuomo's Executive Orders tolling limitations periods due to the COVID-19 pandemic. To avoid dismissal, plaintiff was required to proffer an explanation for its delay. (*Van Hoesen v Dolen*, 94 AD3d 1264 [3rd Dept. 2012], *lv. denied*, 19 NY3d 809 [2012]). Plaintiff's submissions do not address the reason for its delay in this matter. Its general reference, in its memorandum of law, to the wide-spread effects of the pandemic is insufficient. As such, it would be improvident exercise of discretion for this Court to grant a default. (*Id.*) Accordingly, it is hereby

ORDERED that plaintiff's motion for a default judgment is denied without prejudice to a subsequent motion on proper papers. Any such motion must be made within sixty (60) days of the date of entry of this Decision and Order.

This shall constitute the Decision and Order of the Court. The original Decision and Order is being filed with the Ulster County Clerk via NYSCEF. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

SO ORDERED.

Dated: June 8, 2022
Kingston, New York

ENTER,



JULIAN D. SCHREIBMAN, JSC

Papers considered: Notice of Motion, Affirmation in Support and Memorandum of Law by Joseph M. Jackling, Esq. dated December 27, 2021, with Exhibits A-E.