

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

-----X
JON P. FRANCO

Plaintiff,

- against -

VINCENT FRANCO

Defendants.

-----X

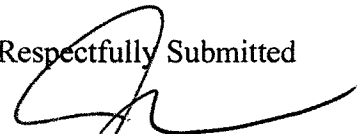
Index No.: 515447/2016

NOTICE OF ENTRY

That the within is a true copy of an Order duly entered in the clerks of the court of the within named Court on January 10, 2020

Dated January 21, 2020

Respectfully Submitted



Jeremy M. Iandolo
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TO:

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FILED: KINGS COUNTY CLERK 01/10/2020

INDEX NO. 522740/2018

NYSCEF DOC. NO. 30

RECEIVED NYSCEF: 01/14/2020

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No.: 522740/2018
Motion Date: 8-24-19
Mot. Cal. No.: 22

-----X
JON P. FRANCO,

Plaintiff,

-against-

DECISION/ORDER

VINCENT FRANCO,

Defendant,
-----X

The following papers numbered 1 to 4 were read on this motion:

Papers:	Numbered:
Notice of Motion	
Affidavits/Affirmations/Exhibits.....	1
Answering Affirmations/Affidavits/Exhibits.....	2
Reply Affirmations/Affidavits/Exhibits.....	3
Supplemental Reply.....	4

Upon the foregoing papers, the motion is decided as follows:

Plaintiff brought this action by motion for summary judgment in lieu of complaint pursuant to CPLR 3213 seeking to recover on a promissory note. Defendant opposes the motion.

In support of his motion, plaintiff submitted a copy of the note and his sworn affidavit. The note was purportedly signed by the defendant on February 14, 2012 and unconditionally and unequivocally obligated the defendant to pay the plaintiff the principal sum of \$50,000 by May 19, 2018 and specified that the note shall bear interest, compounded annually, at a rate of 5.23%. In his affidavit sworn to on October 29, 2018, plaintiff averred that the defendant had not made any payments under the note.

The plaintiff made a prima facie showing of entitlement to judgment as a matter of law by proving the existence of the subject note and nonpayment according to its terms (*see Neuhaus v.*

MS # 01

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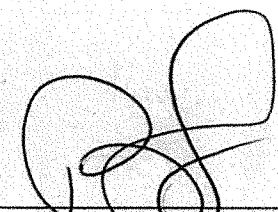
McGovern, 293 A.D.2d 727, 728, 741 N.Y.S.2d 436; *Hestnar v. Schetter*, 284 A.D.2d 499, 500, 728 N.Y.S.2d 479; *Simoni v. Time-Line, Ltd.*, 272 A.D.2d 537, 538, 708 N.Y.S.2d 142; *Bennell Hanover Assoc. v. Neilson*, 215 A.D.2d 710, 711, 627 N.Y.S.2d 439). The burden then shifted to the defendant to establish by admissible evidence the existence of a triable issue of fact with respect to a bona fide defense (*see Hestnar v. Schetter, supra; Naugatuck Sav. Bank v. Gross*, 214 A.D.2d 549, 625 N.Y.S.2d 572). Defendant's claim in opposition to the motion, as set forth in his sworn affidavit, that he did not sign the note was insufficient to raise a triable issue of fact as "[s]omething more than a bald assertion of forgery is required to create an issue of fact contesting the authenticity of a signature" (*Banco Popular N. Am. v. Victory Taxi Mgt.*, 1 N.Y.3d 381, 384, 774 N.Y.S.2d 480, 806 N.E.2d 488; *Bronsnick v. Brisman*, 30 A.D.3d 224, 224, 819 N.Y.S.2d 492, 493).

Accordingly, it is hereby

ORDERED that plaintiff's motion is granted and plaintiff may enter judgment against the defendant in the amount of \$50,000, with interest at the rate of 5.23% from February 14, 2012, compounded annually.

This constitutes the decision and order of the Court.

Dated: December 30, 2019


 PETER P. SWEENEY, J.S.C.
 HON. PETER P. SWEENEY

2020 JAN 10 AM 9:56
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 KINGS COUNTY CLERK

CIVIL COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No. 515447/2016

-----X

JON P. FRANCO

Plaintiff,

Affirmation of Service

vs.

VINCENT FRANCO

Defendants.

-----X

Jeremy M. Iandolo Esq. an attorney at law admitted to practice before this Court affirms as follows:

On the 21ST of JANUARY 2020, I served true copies of the following documents

(1) NOTICE OF ENTRY

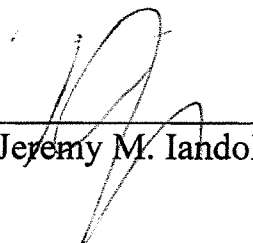
Upon the counsel for VINCENT FRANCO, by causing to be deposited true copies of same in a properly addressed First Class Mail, postage paid, and addressed to:

Edwards and Rockmore
Jonathan Edwards, Esq.
666 Old Country Rd. Suite 600
Garden City NY 11530

I declare under penalty of perjury that the forgoing is true and correct.

Dated: January 21, 2020

Brooklyn, New York



Jeremy M. Iandolo, Esq.