

**Displayers, Inc. v National Museum of Catholic
Art & History**

2007 NY Slip Op 30288(U)

March 12, 2007

Supreme Court, New York County

Docket Number: 0601968

Judge: Barbara R. Kapnick

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SUPREME COURT OF THE STATE OF NEW YORK / NEW YORK COUNTY

PRESENT: **BARBARA R. KAPNICK**

PART 12

Index Number : 601968/2004
DISPLAYERS INC

INDEX NO.

601968/04

vs
NATIONAL MUSUEM OF CATHOLIC

MOTION DATE

Sequence Number : 001
SUMMARY JUDGMENT

MOTION SEQ. NO.

001

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

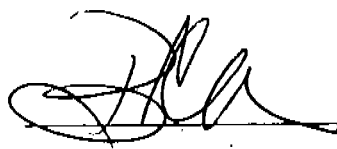
**MOTION IS DECIDED IN ACCORDANCE WITH
ACCOMPANYING MEMORANDUM DECISION**

FILED

MAR 21 2007

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 3/12/07



J.S.C.

BARBARA R. KAPNICK

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

[* 1]

FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 12

-----X
THE DISPLAYERS, INC.,

Plaintiff,

-against-

NATIONAL MUSEUM OF CATHOLIC ART
AND HISTORY,

Defendant.
-----X

BARBARA R. KAPNICK, J.:

DECISION/ORDER

Index No. 601968/04

Motion Seq. No. 001

FILED
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This is an action for breach of contract (first cause of action), an account stated in the sum of \$26,000 (second cause of action), and for legal fees (third cause of action).

Plaintiff The Displayers, Inc. sent a Proposal dated October 1, 2002 to defendant National Museum of Catholic Art and History ("the Museum") outlining services it proposed to provide in connection with the design, production and installation of the 'East Harlem Exhibition'. Defendant's 'Founder and Director', Christina Cox, signed the Proposal (under the heading, 'Approval to Proceed') on October 25, 2002.

Ms. Cox then sent a letter dated October 28, 2002 to plaintiff's President, Gregory Rathe, with respect to the subject exhibit,¹ stating, in relevant part, as follows:

¹ The letter also set forth a payment schedule with respect to a different exhibit, "Sisters of Charity".

Payments for the East Harlem Exhibition, total proposal \$115,000, payments may be made as follow [sic.]:

\$20,000 deposit
\$30,000 around November 15th
\$30,000 around November 30th
\$10,000 around December 5th
\$25,000 end of December

Please note that the museum art committee is currently seeking these exhibitions to be underwritten. If underwritten payments are made to museum sooner than dates projected all payments shall be made in full.

I hope these payments arrangement are meet with your approval, as I am looking forward to working with you.

Plaintiff claims to have completed designs for the East Harlem Exhibition on or before November 13, 2002 and to have so notified defendant in writing on November 19, 2002. Plaintiff also claims to have demanded payment in writing on November 26, 2002, December 11, 2002, February 13, 2003, February 24, 2003, September 10, 2003, September 15, 2003 and September 30, 2003.

Plaintiff further contends that at no point prior to the service of the Answer did defendant dispute its obligation to make payment to plaintiff of the outstanding balance of \$26,000, plus interest, for the work performed on the East Harlem Exhibition.

Plaintiff now moves for partial summary judgment on its second cause of action, on the ground that defendant retained the account of \$26,000, without objecting to it within a reasonable period of time.

Defendant argues in opposition that material issues of fact exist as to whether there was a contract between the parties and as to whether there was an agreed amount.

Specifically, defendant contends that plaintiff accepted its 'counter-offer' (set forth in Ms. Cox's October 28, 2002 letter), with full notice of the risks involved, by performing the work under the revised 'agreement', which defendant claims never stated an express itemization of charges nor a schedule of payments.

Defendant argues that since there was never an agreement reached regarding the amount owed to the plaintiff by the Museum, there can be no account stated and summary judgment is inappropriate.

However, defendant has not denied that it received multiple demands for payment from plaintiff for services rendered and did not object to the demands in a reasonable amount of time. See, Federal Express Corp. v. Federal Jeans, Inc., 14 A.D.3d 424 (1st Dep't 2005).

Accordingly, based on the papers submitted and the oral argument held on the record on December 6, 2006, this Court finds that plaintiff is entitled to summary judgment on its claim for an account stated.

The Clerk may enter judgment in favor of plaintiff The Displayers, Inc. and against defendant National Museum of Catholic Art and History in the sum of \$26,000, together with interest to be calculated by the Clerk from December 31, 2002, and costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

Plaintiff's claim for attorneys' fees is severed and continued and an assessment thereof is hereby directed.

Upon filing of a note of issue, the payment of the proper fees, if any, and service of a copy of this order with notice of entry, the Clerk of the Trial Support Office shall place this matter on the appropriate trial calendar for the above-directed assessment.

This constitutes the decision and order of this Court.

Dated: March 12, 2007



Barbara R. Kapnick
J.S.C.

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BARBARA R. KAPNICK
J.S.C.