

**Citicorp Vendor Fin., Inc. v Trautman  
Wasserman & Co., Inc.**

2007 NY Slip Op 30762(U)

April 12, 2007

Supreme Court, New York County

Docket Number: 0604272/2006

Judge: Judith J. Gische

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

JUDITH J. GISCHE, J.S.C.

PRESENT: \_\_\_\_\_

PART \_\_\_\_\_

Index Number : 604272/2006

CITICORP VENDOR FINANCE INC

vs

TRAUTMAN WASSERMAN & CO INC.

Sequence Number : 001

DEFAULT JUDGMENT

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

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

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

Answering Affidavits -- Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED
_____
_____
_____

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion

**motion (s) and cross-motion(s)  
decided in accordance with  
the annexed decision/order  
of even date.**

**FILED**  
APR 18 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 4/13/07

[Signature] J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

BY MAIL  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 10

-----x

CITICORP VENDOR FINANCE, INC.,

Plaintiff,

-against-

TRAUTMAN WASSERMAN & CO., INC.,

Defendant.

-----x

**Decision/Order**

Index No.: 604272/06

Seq. No. : 001

Present:

Hon. Judith J. Gische

J.S.C.

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

**Papers**

Pltfs not. motion [d j/mt], affirm (BEW), affid (EP), exhs

**Numbered**

**FILED**  
APR 18 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

..... 1

-----x

*Upon the foregoing papers, the decision and order of the court is as follows:*

Plaintiff seeks a default judgment against defendant Trautman Wasserman & Co., Inc. ("Trautman"). This action is for default under a commercial equipment lease. Before the court is plaintiff's motion for entry of a default judgment against Trautman for its failure to answer the Summons and Complaint.

**Background**

This action is against a corporate defendant, Trautman, and is for payments due and owing under an undated commercial equipment lease (the "Lease") entered into between Trautman and Konica Minolta Business Solutions USA ("Konica"). The Agreement commenced on the date the leased equipment was delivered to Trautman, and remained effective for a period of sixty consecutive months. The equipment was

delivered to Trautman on December 16, 2004. On December 16, 2004, plaintiff states that Konica transferred its rights, title and interest under the Lease to plaintiff, via a written assignment (the "Assignment") which is also undated.

Plaintiff filed the Summons and Complaint on December 14, 2006. The Summons and Complaint were personally served on Gilly Gerdano, Vice President of Trautman, on January 2, 2007. CPLR 311(a)(1). Defendant did not appear, or answer the complaint within the time provided under the CPLR, nor did it obtain an order from the Court extending its time to do so. On February 20, 2007, plaintiff mailed an additional copy of the Summons and Complaint, thereby complying with the additional requirements of CPLR § 3215(g)(4). Such additional notice was served at least 20 days prior to entry of a default judgment.

Plaintiff's motion is supported by the affirmation of Bryan E. Wolkind and the sworn affidavit of Emily Powers. A copy of the Lease entered into between Trautman and Konica has been provided to the court. A copy of the Assignment has also been provided. Based on the foregoing, plaintiff contends it owns the rights, title and interest to certain equipment in Trautman's possession pursuant to the Lease. The equipment consists of a copier and two printers.

Plaintiff also contends that Trautman defaulted on May 15, 2006, under the lease, after making sixteen of sixty equal payments of \$1,990.00. Plaintiff states that Trautman currently owes to plaintiff the total amount due under the lease, totaling \$87,560.00, less a six percent discount pursuant to paragraph nine of the Lease, thereby totaling \$78,422.38 (first cause of action).

Plaintiff also seeks interest thereon at the rate of 1.15% per month from the date

of default, May 15, 2006 (second cause of action), reimbursement for all federal, state and local taxes plaintiff incurred on Trautman's behalf, in the amount of \$6,567.87 (third cause of action), and reasonable attorneys fees in the amount of \$800.00 (fourth cause of action). Plaintiff waives its fifth and sixth causes of action.

### Discussion

Since a default in answering the complaint constitutes an admission of the factual allegations therein, and the reasonable inferences which may be made therefrom [Rokina Optical Co., Inc. v. Camera King, Inc., 63 NY2d 728 (1984)], plaintiff is entitled to default judgment in its favor, provided it otherwise demonstrates that it has a *prima facie* cause of action [Gagen v. Kipany Productions Ltd., 289 AD2d 844 (3<sup>rd</sup> dept. 2001)].

Plaintiff's first cause of action is for breach of contract. The elements of a cause of action for breach of contract are: (1) formation of a contract between the parties; (2) performance by plaintiff; (3) defendant's failure to perform; and (4) resulting damage. Furia v. Furia, 166 A.D.2d 694 (2<sup>nd</sup> Dept. 1990). The above claims establish the elements of a *prima facie* cause of action for breach of contract and plaintiff is therefore entitled to an entry of default judgment with respect to the first cause of action.

The Lease also provides that Trautman shall pay, upon default, interest at the rate of One 15/100 Percent (1/15%), applicable federal, state and local taxes and reasonable attorneys fees in connection with enforcement of the lease. Plaintiff is therefore entitled to prejudgment interest at the agreed upon rate and reimbursement for taxes paid on Trautman's behalf.

With respect to plaintiff's claim for attorneys fees, it states that, to date, it has

incurred legal fees in the amount of Eight Hundred Dollars (\$800.00). (Wolkind states that four hours have been expended in connection with this action at an hourly billing rate of \$200.00 per hour.) The motion is unopposed and the court has reviewed the record and deems the fees incurred by plaintiff reasonable and commensurate with the motion practice. Accordingly, plaintiff is entitled to the attorneys fees it has incurred.

Accordingly, plaintiff's motion for entry of a default judgment on the first, second, third and fourth causes of action is hereby granted and the fifth and sixth causes of action are hereby severed and dismissed.

### **Conclusion**

In accordance with this decision, it is hereby:

**ORDERED** that the motion by Citicorp Vendor Finance, Inc., plaintiff in this action, for an entry of a default judgment, against defendant Trautman Wasserman & Co., Inc., is hereby granted; and it is further

**ORDERED** that the Clerk shall enter a money judgment in favor of Citicorp Vendor Finance, Inc., plaintiff in this action, against defendant Trautman Wasserman & Co., Inc., in the amount demanded on the first cause of action, totaling Seventy Eight Thousand Four Hundred and Twenty Two 38/100 Dollars (\$78,422.38), together thereon with prejudgment interest at the rate of One 15/100 Percent (1.15%) per month from May 15, 2006; and it is further

**ORDERED** that the Clerk shall enter a money judgment in favor of Citicorp Vendor Finance, Inc., plaintiff in this action, against defendant Trautman Wasserman & Co., Inc., in the amount demanded in the third cause of action, totaling Six Thousand

Five Hundred Sixty Seven 87/100 Dollars (\$6,567.87); and it is further ordered

**ORDERED** that the Clerk shall enter a money judgment in favor of Citicorp Vendor Finance, Inc., plaintiff in this action, against defendant Trautman Wasserman & Co., Inc., in the amount demanded in the fourth cause of action, totaling Eight Hundred Dollars (\$800.00); and it is further


**ORDERED** that the fifth and sixth causes of action are hereby severed and dismissed.

Any relief not expressly addressed herein has nonetheless been considered by the Court and is denied.

This shall constitute the decision and order of the Court.

Dated: New York, New York  
April 12, 2007

So Ordered:

  
\_\_\_\_\_  
HON. JUDITH J. GISCHE, J.S.C.

**FILED**  
APR 18 2007  
NEW YORK  
COUNTY CLERK'S OFFICE