

**JP Morgan Chase Bank, N.A. v Andre Wallace  
Prod. & Publ. Co.**

2007 NY Slip Op 31178(U)

May 4, 2007

Supreme Court, New York County

Docket Number: 0600233/2007

Judge: Judith J. Gische

Republished from New York State Unified Court  
System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for  
any additional information on this case.

This opinion is uncorrected and not selected for official  
publication.

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

PRESENT: HON. JUDITH J. GISCHÉ

PART 10

Index Number : 600233/2007

JPMORGAN CHASE BANK, N.A.

vs

ANDRE WALLACE PRODUCTION

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 \_\_\_\_\_

*in default*

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

**FILED**

MAY 14 2007

NEW YORK  
COUNTY CLERK'S OFFICE

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

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

Dated: 5/4/07

*JG*  
HON. JUDITH J. GISCHÉ J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

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

-----x  
JP Morgan Chase Bank, N.A.,

Plaintiff

-against-

Andre Wallace Production & Publishing  
Co., and Andre D. Wallace,

Defendants.  
-----x

DECISION/ORDER

Index No.:

Seq. No.:

Present:

Hon. Judith J. Gische

J.S.C.

**FILED**  
MAY 14 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

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

Papers	Numbered
Pitff N/M [§3215] w/KH affid, exhs . . . . .	1
Proof of service . . . . .	2

*Upon the foregoing papers the court's decision is as follows:*

**GISCHE, J.**

This action is by plaintiff, a bank, to enforce payments due by defendants pursuant to a "Business Revolving Credit Agreement," applied for by defendants and approved on June 30, 2004 ("the revolving credit agreement") The revolving credit agreement is between the bank and Andre Wallace Production & Publishing Co. It is personally guaranteed by Andre Wallace, the individually named defendant who is also the president of the corporate defendant.

Plaintiff has filed proof of service that the summons and complaint was served upon the registered managing agent of the corporation (Mr. Wallace) on January 27,

2007. Mr. Wallace was also separately and personally served that day as well. The defendants' time to answer the complaint or move has expired and not been extended by the court. Therefore, both defendants have defaulted in answering the complaint, and this motion for default judgment which is timely under CPLR § 3215 (c), will be considered.

Plaintiff has complied with the additional notice requirements of CPLR § 3215 (g) (3) by having separately mailed a copy of the summons and complaint to Mr. Wallace's place of residence. Since this motion was served upon both defendants more than 20 days before entry of judgment and the summons and complaint are included as exhibits, plaintiff has also complied with the additional notice requirement of CPLR § 3215 (g) (4) as well.

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 a default judgment in its favor, provided it demonstrates it has a prima facie cause of action. [Gagen v. Kipany Productions Ltd., 289 AD2d 844 (3<sup>rd</sup> dept. 2001)].

To establish its case, plaintiff relies upon the sworn affidavit of Ms. Hanson, a vice president of the bank, who has personal knowledge of the facts. She states that the corporate defendant agreed to borrow the sum of \$50,000 from the bank and to repay the loan in monthly installments, with interest equal to JP Morgan's prime rate, plus 3.25% per annum. The loan was personally guaranteed by Mr. Wallace.

The defendants defaulted in making the loan payments in October 2006. Although plaintiff has demanded payment in full, they have not complied and the principal sum of \$49,400.57 remains unpaid. Interest has accrued and plaintiff is also entitled under the agreement to recover late fees.

Plaintiff is entitled to a default judgment against the corporate defendant on the first cause of action and against the individual defendant on the second cause of action. The Clerk shall enter judgment in favor of plaintiff, against each of the defendants, jointly and severally, in the principal sum due (\$49,400.57), together with pre-judgment interest thereon through March 20, 2007 of \$3,192.14, plus additional pre-judgment interest from March 20, 2007 through date of entry of judgment, together with late fees of \$460.04, and the costs and disbursements of this action.

Accordingly,

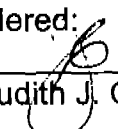
*It is hereby*

ORDERED THAT the Clerk shall enter judgment a money judgment in favor of plaintiff, against Andre Wallace Production & Publishing Co. and Andre Wallace, jointly and severally, in the principal sum due (\$49,400.57), together with pre-judgment interest thereon through March 20, 2007 of \$3,192.14, together with additional pre-judgment interest from March 20, 2007 through date of entry of judgment, plus late fees of \$460.04, together with the costs and disbursements of this action; and it is further

ORDERED THAT any relief requested but not expressly addressed in this decision and order has nonetheless been considered and is hereby denied; and it is further

ORDERED THAT this shall constitute the decision and order of the Court.

Dated: New York, New York  
May 4, 2007

So Ordered:  
  
Hon. Judith J. Gische, J.S.C.

**FILED**  
MAY 14 2007  
NEW YORK  
COUNTY CLERK'S OFFICE