

**New York Association for New Americans, Inc. v  
Mends**

2007 NY Slip Op 33182(U)

October 1, 2007

Supreme Court, New York County

Docket Number: 0105561/2007

Judge: Jane S. Solomon

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

JANE S. SOLOMON

Index Number : 105561/2007

**NEW YORK ASSOCIATION**

VS.

**NIC MENDS**

SEQUENCE NUMBER : 001

DEFAULT JUDGMENT

PART 55

INDEX NO. 105561/2007

MOTION DATE 9-4-2007

MOTION SEQ. NO. 001

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

The following papers, numbered 1 to 4 were read on this motion to/for default judgment

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1-4</u>
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____


Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed memorandum decision and order.

**FILED**  
 OCT 05 2007  
 NEW YORK  
 COUNTY CLERK'S OFFICE

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

Dated: 10/1/07

  
 JANE S. SOLOMON J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 55

-----X

NEW YORK ASSOCIATION FOR NEW  
AMERICANS, INC.,

Plaintiff,

-against-

NICK MENDS and ACHEAMPONG AKOTO,

Defendants.

**FILED**

OCT 05 2007

NEW YORK  
COUNTY CLERK'S OFFICE

INDEX NO. 105561/2007

DECISION and ORDER

-----X

JANE S. SOLOMON, J.

In this action for collection on a promissory note, plaintiff New York Association for New Americans, Inc. ("Plaintiff") moves under CPLR § 3215 for default judgment against defendant Acheampong Akoto ("Akoto") on the third, fourth and sixth causes of action, and to sever the action against defendant Nick Mends ("Mends"). For the reasons described herein, the motion is granted in part.

Plaintiff is a New York not-for-profit corporation with its principal place of business in New York County. On June 29, 2005, Mends executed a promissory note (the "Note") under which he promised to repay the \$35,000 loaned to him by Plaintiff with interest at a rate of 10% per annum. The Note states that Mends was required to pay Plaintiff 35 equal monthly installments

of \$1,129.35 beginning on August 1, 2005, and then make a final payment equal to the full outstanding balance. The Note also states that late fees of \$15 will be charged for any late installment payments.

Also on June 29, 2005, Akoto executed a guaranty (the "Guaranty"), unconditionally and irrevocably guaranteeing Mends' punctual payments under the Note. The Guaranty provides that Akoto agrees to pay Plaintiff on demand all costs and expenses, including collection fees, late fees and reasonable attorneys' fees, incurred by Plaintiff in enforcing the Guaranty.

Plaintiff alleges that on or about May 8, 2006, Mends stopped making payments and Akoto has not made any payments pursuant to the Guaranty. At the time of default, Plaintiff alleges that the outstanding balance was \$34,950.07. Plaintiff commenced this action in April 2007 seeking \$34,950.07 together with interest from May 8, 2006 at a rate of 10% per annum and attorney fees in the amount of 20% of the judgment amount.

The Affidavit of Service for Akoto states that he was served on or about May 12, 2007, by leaving a copy of the Summons and Complaint with his brother at Akoto's address listed on the Guaranty. A copy of the same was mailed to Akoto at the same address on May 15, 2007. Service was attempted on Mends at his last known address, but could not be completed because this

address was a UPS store with mailboxes. Akoto has not answered or otherwise appeared in this matter and the time to do so has expired. Plaintiff now moves for default judgment against Akoto on the third, fourth and sixth causes of action, and to sever the action against Mends.

#### Discussion

Service was properly made on Akoto under CPLR § 308(2) by leaving the Summons and Complaint with his brother, a person of suitable age and discretion, at his address, and then mailing the same to him at his last known residence within twenty days. He has not answered or otherwise responded to the Complaint or to this Motion, and he is therefore in default and liable to Plaintiff under the Guaranty for \$34,950.07 together with interest from May 8, 2006 at a rate of 10% per annum.

Plaintiff has also moved for attorneys' fees, to which he is entitled under the Guaranty. However, although Plaintiff's attorney submits an affirmation that 20% of the judgment amount is reasonable based on approximately 30 hours of services so far rendered by legal personnel and remaining services to be performed, the affirmation does not provide sufficient details about the time and charges incurred. Therefore, the calculation for reasonable attorneys' fees must be submitted to a Special Referee.

Accordingly, it hereby is

ORDERED that Plaintiff's motion for default judgment against Akoto is granted on the third, fourth and sixth causes of action, and Plaintiff is entitled to judgment under the Guaranty in the amount of \$34,950.07, with interest at a rate of 10% per annum from May 8, 2006; and it further is

ORDERED that the issue of how much Akoto owes to Plaintiff for reasonable attorneys' fees is referred to a Special Referee to hear and report with recommendations; and it further is

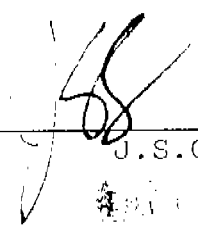
ORDERED that the Complaint is severed and dismissed as against Mends; and it further is

ORDERED that this motion shall be held in abeyance pending the report and recommendations of the Special Referee and a motion pursuant to CPLR § 4403; and it is further

ORDERED that a copy of this order with notice of entry shall be served by hand within 45 days of entry on the Judicial Support Office (Room 311) to arrange a date for the reference to a Special Referee, failing which the Clerk is directed to enter judgment in favor of Plaintiff and against Akoto for \$34,950.07 with interest at a rate of 10% per annum from May 8, 2006, together with costs and disbursements as taxed.

Dated: October / , 2007 ENTER:

**FILED**  
OCT 05 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

  
\_\_\_\_\_  
J.S.C.