

AFCO Credit Corp. v Shinique Constr., Inc.

2007 NY Slip Op 33552(U)

October 24, 2007

Supreme Court, New York County

Docket Number: 0108492/2007

Judge: Judith J. Gische

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

PRESENT: JUDITH J. GISCHE, J.S.C.

PART 10

Index Number : 108492/2007

AFCO CREDIT CORP.

vs

SHINIQUE CONSTRUCTION, INC.

Sequence Number : 001

SUMMARY JUDGMENT/LIEU COMPLAINT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

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

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NOV 01 2007
NEW YORK
COUNTY CLERK'S OFFICE

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

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

Dated: 10/24/07

JUDITH J. GISCHE, J.S.C. 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: PART 10

-----X
AFCO CREDIT CORPORATION,

Plaintiff,

-against-

SHINIQUE CONSTRUCTION, INC.,

Defendant.
-----X

Decision/Order

Index No.: 108492/07

Seq. No. : 001

Present:

Hon. Judith J. Gische

J.S.C.

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NEW YORK
COUNTY CLERKS OFFICE

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

Papers

Plt's motion [sjlc] w/SGL affirm, RJR affid, exhs

Numbered

1

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

This is plaintiff's motion for summary judgment in lieu of a complaint. CPLR § 3213. Plaintiff AFCO Credit Corporation ("AFCO") holds a Commercial Premium Finance Agreement (the "Agreement"). The Agreement, entered into by itself and defendant Shinique Construction, Inc. ("Shinique") is undated and has been provided to the court. The Agreement obligated: (1) AFCO to pay insurance premiums, in the amount of \$64,585.70, on behalf of Shinique; and (2) Shinique to unconditionally repay AFCO the moneys advanced on its behalf for payment of the insurance premiums.

Discussion

This motion was served upon the New York State Secretary of State, on July 10, 2007, because Shinique is a domestic corporation. BCL § 306. Defendant's time to

[* 3]

oppose the motion has expired, and it has not done so. Such time has not been extended by the court. Therefore, this motion is before the court on default and AFCO is entitled to summary judgment provided it makes out the *prima facie* case.

CPLR 3213 is intended to be an efficient and effective means of securing a judgment on claims presumptively meritorious. Interman Indus. Products, Ltd. v. R.S.M. Electron Power, Inc., 37 N.Y.2d 151 (1975). An instrument for the payment of money qualifies for CPLR 3213 treatment if it contains an unconditional promise by the debtor to repay lender the moneys advanced to it or on its behalf for payment. Afco Credit Corp. v. Boropark Twelfth Ave. Realty Corp., 187 A.D.2d 634, (2nd Dept. 1992) The moving party is entitled to summary judgment unless the other party comes forward with evidentiary proof sufficient to raise an issue as to the defenses to the instrument. Id.

Here, the Agreement unequivocally requires Shinique to pay AFCO ten monthly payments of \$6,458.57 with the first installment due on December 7, 2005. Based on a statement of account, AFCO claims that \$6,447.52 is currently due and owing on the Agreement since February 17, 2006. AFCO states it provided Shinique with the required statutory notice of default, pursuant to Banking Law § 569. The Agreement qualifies as an instrument for the payment of money. Therefore, AFCO has established entitlement to summary judgment against Shinique.

AFCO seeks pre-judgment interest on the principal. The Agreement provides for interest upon default at the "contract rate of interest," which is 8.076% per annum. AFCO also seeks an additional 5% of the balance due and owing as a delinquency and collection charge, pursuant to Banking Law § 569(1).

[* 4]

AFCO further seeks an assessment of 20% for legal fees incurred in the prosecution of this action. Banking Law § 569(2) provides that “[a] premium finance agreement may also provide for the payment of attorney's fees not exceeding twenty per centum of the amount due and payable under the agreement if it is referred for collection to an attorney...” Under the Agreement, Shinique agreed “to pay reasonable attorney fees and costs.” Counsel for AFCO has provided a description of the services which have been performed and which are anticipated, and has established that 20% of the balance due and owing bears a reasonable relationship to the services provided. First National Bank of East Islip v. Brower, 42 N.Y.2d 471 (1977).

Accordingly, AFCO is entitled to summary judgment against Shinique and has established that it is entitled to judgment against Shinique in the amount demanded, to wit: \$6,447.52, plus interest thereon from February 17, 2006 at 8.076% per annum, together with a statutory collection charge in the total amount of \$322.38 and reasonable legal fees and costs in the total amount of \$1,289.51.

Conclusion

In accordance herewith, it is hereby

ORDERED that Plaintiff's motion pursuant to CPLR § 3213 for summary judgment against defendant is granted in all respects; and it is further

ORDERED that the Clerk shall enter a money judgment in favor of plaintiff AFCO Credit Corporation against defendant Shinique Construction, Inc., in the amount of \$6,447.52, plus interest thereon from February 17, 2006 at 8.076% per annum, together with a statutory collection charge in the total amount of \$322.38, for

reasonable legal fees in the total amount of \$1,289.51, together with the costs and disbursements of this action

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied.

This shall constitute the decision and order of the Court.

Dated: New York, New York
October 24, 2007

So Ordered:



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

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