

<b>Citicorp Vendor Fin., Inc. v Chappy Enters., Inc.</b>
2007 NY Slip Op 34089(U)
November 28, 2007
Supreme Court, New York County
Docket Number: 0601550/2007
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 \_\_\_\_\_

*Justice*

Index Number : 601550/2007

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

CITICORP VENDOR

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

vs

CHAPPY ENTERPRISES, INC.

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

Sequence Number : 002

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

DEFAULT JUDGEMENT

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

**FILED**  
DEC 17 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

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

Dated: 11/28/07

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  
CITICORP VENDOR FINANCE, INC.,

Plaintiff

-against-

CHAPPY ENTERPRISES, INC.,

Defendant.  
-----X

**DECISION/ORDER**

Index No.: 601550/07

Seq. No.: 002

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):  
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**Papers**

**Numbered**

Pltf's mot (d j) w/ MDG affirm, MH affid, exhs . . . . . 1  
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*Upon the foregoing papers the court's decision is as follows:*

This is an action for breach of contract. On June 26, 2007, the court previously granted the motion by plaintiff Citicorp Vendor Finance, Inc. ("Citicorp") for an Order of Seizure to seize from defendant Chappy Enterprises ("Chappy") the equipment identified in a lease agreement (four Canon copiers). Citicorp now moves: [1] for entry of a default judgment against Chappy, pursuant to CPLR § 3215; and [2] to amend the caption in this action to read CIT Technology Financing Services II LLC ("CIT") as successor in interest to Citicorp, pursuant to CPLR § 3025.

Although Citicorp has provided proof of service of the summons, verified complaint, the prior order to show cause, and the instant motion, Chappy has neither appeared in this action nor otherwise opposed the instant motion. Accordingly, this motion will be considered on default.

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 N.Y.2d 728 (1984). Citicorp is entitled to a default judgment in its favor, provided it demonstrates that it has a prima facie cause of action. Gagen v. Kipany Productions Ltd., 289 AD2d 844 (3<sup>rd</sup> dept. 2001). However, Citicorp is not entitled to entry of a default judgment because it has failed to establish a *prima facie* cause of action for the reasons that follow.

Citicorp has asserted two causes of action sounding in breach of contract and a third cause for attorneys' fees incurred in connection with the prosecution of this action.

Chappy entered into an undated lease for certain equipment with Leslie Digital Imaging, LLC, d/b/a Color Tool Box ("Leslie"). Citicorp claims that "through its predecessor in interest, Copelco Capital, Inc., it acquired certain leases from Leslie. Citicorp has not provided any proof of this assignment.

Citicorp further claims that Chappy breached the lease agreement when it failed to make payment due under the lease on December 16, 2006. Citicorp has not provided any proof of Chappy's breach, notice to Chappy of default under the lease, or even a statement of account.

As for the branch of this motion seeking to amend the caption, CIT Technology Financing Services II LLC ("CIT") and Citicorp entered into a Purchase and Sale Agreement whereby Citicorp's interest in the lease was transferred to CIT effective April 30, 2007. A copy of the Purchase and Sale Agreement has been provided to the court. Citicorp contends that Chappy would not suffer an prejudice should the court amend the caption to reflect this transfer. Accordingly, the court orders that the caption shall be amended accordingly.

### **Conclusion**

In accordance herewith, it is hereby:

**ORDERED** that motion by plaintiff Citicorp Vendor Finance, Inc., is granted only the the extent that the caption of this proceeding is hereby amended, upon plaintiff's service of a copy of this decision and order with notice of entry on the Clerk of this Court and the Trial Support Clerk (Room 158) so that the Clerks shall mark their records to reflect that amendment, as follows:

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

-----X  
CIT Technology Financing Services II LLC,  
as successor in interest to plaintiff  
CITICORP VENDOR FINANCE, INC.,

Index No.: 601550/07

Plaintiff

-against-

CHAPPY ENTERPRISES, INC.,

Defendant.  
-----X

**FILED**  
DEC 17 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

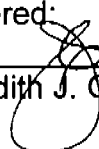
and it is further

**ORDERED** that plaintiff's motion is otherwise denied without prejudice to renew upon proper papers. Pursuant to CPLR § 3216, plaintiff has ninety (90) days to either resume prosecution of this action, serve and file a note of issue or notify the court that it is abandoning this action. Plaintiff's failure to comply with this order will result in immediate dismissal of this matter for unreasonably neglecting to proceed.

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

This shall constitute the decision and order of the Court.

Dated: New York, New York  
November 28, 2007

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