

Tischbein v Gindi

2008 NY Slip Op 30761(U)

March 13, 2008

Supreme Court, New York County

Docket Number: 0112131/2007

Judge: Louis B. York

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PRESENT: **LOUIS B. YORK**
J.S.C.

PART 2

Justice

Index Number : 112131/2007

TISCHBEIN, ZOE

VS.

GINDI, RALPH

SEQUENCE NUMBER : # 001

DEFAULT JUDGMENT

INDEX NO. 112131-07

MOTION DATE

MOTION SEQ. NO. #001

MOTION CAL. NO. _____

Lead 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

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

FILED

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION.

MAR 18 2008

NEW YORK COUNTY CLERK'S OFFICE

NYS SUPREME COURT RECEIVED

MAR 18 2008

MOTION SUPPORT OFFICE

Dated: 3/13/08

Luigi

J.S.C.

LOUIS B. YORK

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 2

ZOE TISCHBEIN,

Plaintiff,

Index No. 112131/2007

-against-

RALPH GINDI, SOLY HALABI,
THE GINDI GROUP, LLC and
JZG PLUS, INC.,

Defendants.

York, J.S.C.:

Plaintiff moves for default judgment in this action. The Complaint and affidavit in support of this motion assert that defendant hired plaintiff for their real estate brokerage firm as a guise, in order to get her to borrow money on their behalf, and subsequently fired her. Plaintiff also alleges that the individual defendants deliberately harassed her, intentionally inflicting emotional distress through their conduct. Defendants have defaulted on the action and on this motion.

On the second cause of action, plaintiff has established a prima facie case for breach of contract through her verified complaint and her affidavit in support of this motion. Though she does not include a copy of her loan agreement with defendants, she includes copies of the two checks she wrote to them, and letters from the two banks setting forth the unpaid balances on her loans. In addition to the outstanding balance, plaintiff seeks any damages she has sustained due

to defendants' default on the loans, including interest and late charges from the banks and interest on the debt at the rate in plaintiff's loan agreements with the bank. At plaintiff's request, the Court will award an immediate judgment on this claim as to the amount of the outstanding debt.

However, plaintiff has not satisfactorily explained why the individuals in question should be liable for a check she wrote to a company – JZG Plus – or why Zalabi, The Gindi Group, LLC or JZG Plus should be liable for the check she wrote to Gindi. The statement in her complaint and other papers that her employers assured her they were like a family is insufficient; and, plaintiff does not set forth any legal theory, much less back up that theory with facts. Even in a motion for default judgment that is submitted to the Court on default, a party must set forth a prima facie case against each party for each sum sought. For this reason, judgment will be awarded only against the parties to whom plaintiff wrote the checks in question.

In addition, plaintiff has not supported her claim to the extent that she seeks to recover \$3,696.06 toward the loans. The bank statements she has annexed chronicle her cash withdrawals and list other charges, but it is not clear how they relate to the debt in question. This amount, therefore, must be assessed at a hearing.

Plaintiff cannot prevail on her first cause of action. Plaintiff alleges that defendants committed fraud when they borrowed the money from her. According to plaintiff, defendants hired her in order to entice her to take out loans which they did not intend to repay, and fired her after she had borrowed the maximum amounts available to her from two banks.

Unfortunately for plaintiff, the facts as alleged do not support these allegations. Plaintiff states that defendants hired her shortly after her arrival in New York in June of 2004, but did not

ask her for the loans until January of 2007, approximately two-and-a-half years later. This suggests that there was not a causal connection between her hiring and her finances. Moreover, plaintiff was fired approximately two months after they borrowed money from her; this suggest they had financial difficulties and could not retain her services for this reason. Finally, plaintiff acknowledges that defendants continued to make payments on the loans after they fired her, and stopped this practice only after she commenced the lawsuit. Although she also states that there were some delays and at one point says defendants paid the interest on a monthly basis, the fact that defendants continued to make some payments on the interest belies the argument that they borrowed the money with no intent to repay it.

As to her third cause of action, her allegations are sufficient to establish a claim, in particular because they are not refuted. The amount of damages must be ascertained at a hearing. It appears that plaintiff alleges individual and corporate liability but she has not set forth any argument supporting liability against JZG and the Gindi Group and the Court cannot hypothesize as to the basis for this assertion.

Based on the above, it is

ORDERED that plaintiff's motion is granted in part and denied in part; and it is further

ORDERED that plaintiff's motion is denied as to the first cause of action; and it is further

ORDERED that plaintiff's motion is granted as it relates to the second cause of action, and the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendants JZG Plus in the sum of \$26,054.55, with interest of \$8.44 per day from January 30, 2008 until the date of entry of judgment and thereafter at the statutory rate; and against Gindi in the sum of \$22,347.26, plus interest of \$7.61 per day from January 12, 2008 until the date of

entry of judgment and thereafter at the statutory rate; and it is further

ORDERED that plaintiff's motion is granted on liability on the second cause of action as it relates to the issue of reimbursement of money plaintiff paid out personally on the claim, and the matter is referred to a referee to hear and determine damages; and it is further

ORDERED that plaintiff's motion is granted on liability on the third cause of action against defendants Gindi and Halabi, and the matter is referred to a referee to hear and determine damages; and it is further

ORDERED that this matter is referred to the Referee's Clerk, who is directed upon filing of a copy of this Order to place this action on the appropriate referee's calendar to hear and decide the amount due on the portion of the second cause of action set forth above, and on the third cause of action, and to enter a Judgment thereon.

ENTER:

Dated: 3/13/08

FILED

MAR 18 2008

NEW YORK

COUNTY CLERK'S OFFICE

[Signature]

Louis B. York, J.S.C.