

**Federated Fin. Corp. of Am. v Holmes**

2009 NY Slip Op 31621(U)

July 17, 2009

Supreme Court, New York County

Docket Number: 115271/08

Judge: Judith J. Gische

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

JUDITH J. GISCHE, J.S.C.

PRESENT:

PART 10

Index Number : 115271/2008

FEDERATED FINANCIAL CORP. OF AMERICA

vs.

HOLMES, JEHUDA

SEQUENCE NUMBER : # 001

DEFAULT JUDGMENT

Justice

INDEX NO. 115271-08

MOTION DATE 7/17/09

MOTION SEQ. NO. #001

MOTION CAL. NO.

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

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

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

FILED

JUL 22 2009

COUNTY CLERK'S OFFICE NEW YORK

Dated: 7/17/09

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  
FEDERATED FINANCIAL CORPORATION OF  
AMERICA AS ASSIGNEE OF ADVANTA BANK  
CORP.

Plaintiff,

-against-

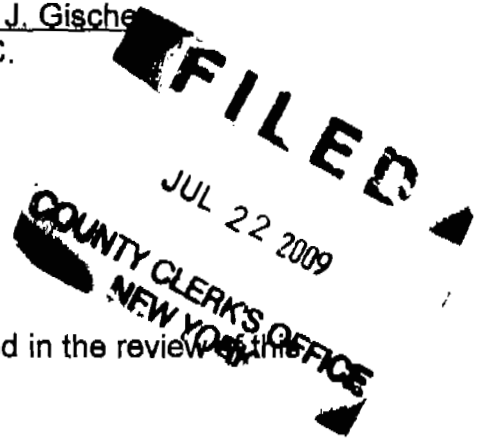
JEHUDA HOLMES A/K/A JEHUDA G. HOLMES  
A/K/A J.G. HOLMES D/B/A GALERIRE RENE  
LTD. AND JEHUDA HOLMES A/K/A JEHUDA G.  
HOLMES AKA J.G. HOLMES, INDIVIDUALLY,

Defendant.  
-----x

**Decision/Order**

Index No.: 115271/08  
Seq. No. : 001

Present:  
Hon. Judith J. Gische  
J.S.C.



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

<b>Papers</b>	<b>Numbered</b>
Pltf's motion w/LB affirm in support, exhs .....	1

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

This is an action to recover on monies extended to the defendant pursuant to credit line extended to defendants Jehuda Homes a/k/a Jehuda G. Holmes a/k/a J.G. Holmes ("Holmes") and Jehuda Homes a/k/a Jehuda G. Holmes a/k/a J.G. Holmes D/B/A Galerire Rene Ltd ("GR Ltd"). Plaintiff now moves, pursuant to CPLR § 3215, for entry of a default judgment against the defendnats. This motion has been submitted to the court without opposition.

Although there is due proof of service of the underlying summons and verified complaint, neither Holmes nor GR Ltd have answered the complaint or otherwise

appeared in this action within the time provided for in the CPLR, nor has their time to do so been extended by the court. Plaintiff has also filed proof of additional service in compliance with CPLR § 3215 [g]. Therefore, both Homes and GR Ltd have defaulted in this action.

Plaintiff is entitled to a default judgment against defendants and in its favor, provided it otherwise demonstrates that it has a *prima facie* cause of action. Gagen v. Kipany Productions Ltd., 289 AD2d 844 (3d Dept 2001). The defendants' default in answering the complaint constitutes an admission of the relevant factual allegations therein and the reasonable inferences which may be made therefrom. Rokina Optical Co., Inc. v. Camera King, Inc., 63 NY2d 728 (1984).

The relevant facts are based upon documentary evidence and/or are stated in the Verified Complaint. On or about June 28, 2003, Jehuda G. Holmes entered into an agreement on behalf of GR Ltd. with Advanta Bank Corp. pursuant to which the later agreed to extend a business credit card to GR Ltd. In the agreement, Jehuda G. Holmes signed as "J.G. Holmes." Holmes also indicated in the agreement that GR Ltd is a corporation and that she was president of same. However, plaintiff claims that based upon it conducted a diligent search of the New York Department of State Division of Corporations, Corporation and Business Entity Database, and that after said search, no corporation named "Galerire Rene Ltd." existed. As a result, plaintiff maintains that Homes does/did business as GR Ltd.

Pursuant to an agreement dated January 10, 2007, Advanta Bank Corp assigned to plaintiff its right to collect all principal, interest and other amounts or proceeds due and owing to it on or before January 10, 2007. Plaintiff has provided a

statement of defendants' account with an ending balance of \$14,862.87, which it claims the defendants failed to pay when due on October 25, 2005, thereby resulting in a default under the agreement. Plaintiff claims that the total of \$26,204.06 is currently due and owing under the agreement, such amount including principal and interest at the rate set forth in the agreement from the date of default up to August 5, 2008.

The elements of a cause of action for breach of contract are: (1) formation of a contract between the parties; (2) performance by plaintiff; (3) defendant's failure to perform; and (4) resulting damage. Furia v. Furia, 166 A.D.2d 694 (2<sup>nd</sup> Dept. 1990). Plaintiff's claims and the proof submitted on this motion establish the elements of a *prima facie* cause of action for breach of contract against both defendants. Therefore, plaintiff is entitled to a default judgment against both GR Ltd, and Holmes, who is not shielded from liability by doing business as a "d/b/a." Accordingly, Plaintiff is entitled to a default judgment against the defendants, joint and severally, in the total amount of \$26,304.06 plus interest thereon from August 5, 2008 at the default rate of \$6.49/day.

### **Conclusion**

In accordance herewith, it is hereby:

**ORDERED** that plaintiff's motion for entry of a default judgment against defendants Jehuda Holmes a/k/a Jehuda G. Holmes a/k/a J.G. Holmes d/b/a Galerire Rene Ltd. and Jehuda Holmes a/k/a Jehuda G. Holmes a/k/a J.G. Holmes; and it is further

**ORDERED** that the clerk shall enter a money judgment in favor of plaintiff Federated Financial Corporation of America and against defendants Jehuda Holmes

a/k/a Jehuda G. Holmes a/k/a J.G. Holmes d/b/a Galerire Rene Ltd. and Jehuda Holmes a/k/a Jehuda G. Holmes a/k/a J.G. Holmes, joint and severally, in the total amount of \$26,304.06 plus interest thereon from August 5, 2008 at the default rate of \$6.49/day, together with costs and disbursements.

Any requested relief not expressly addressed herein has nonetheless been considered by the Court and is denied.

This shall constitute the decision and order of the Court.

Dated: New York, New York  
July 17, 2009

So Ordered:

  
\_\_\_\_\_  
HON. JUDITH J. BISCHÉ, J.S.C.

**FILED**

JUL 22 2009

COUNTY CLERK'S OFFICE  
NEW YORK