

Yee v Citibank N.A.

2009 NY Slip Op 31760(U)

August 4, 2009

Supreme Court, New York County

Docket Number: 104121/08

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
HON. JUDITH J. GISCHE

PRESENT: _____

PART 10

Justice

Index Number : 104121/2008

YEE, DANNY

vs.

CITIBANK N.A.

SEQUENCE NUMBER : # 001

DEFAULT JUDGMENT

INDEX NO. 104121-08

MOTION DATE _____

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

This motion & cross-motion are both submitted on default ① the Reed International. (11:00am).

FILED

AUG 06 2009

COUNTY CLERK'S OFFICE
NEW YORK

MOTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION.

Status conference 9/3/09 at 9:30 am.

Dated: 8/04/09

[Signature]
HON. JUDITH J. GISCHE

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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

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

-----X

Danny Yee,

Plaintiff,

-against-

Citibank N.A.,
Citigroup, Inc.,
Reed International Property Management, Inc.,
And The Public Administrator of New York County,
as Administrator of the Estate of Frederick Reed, deceased,

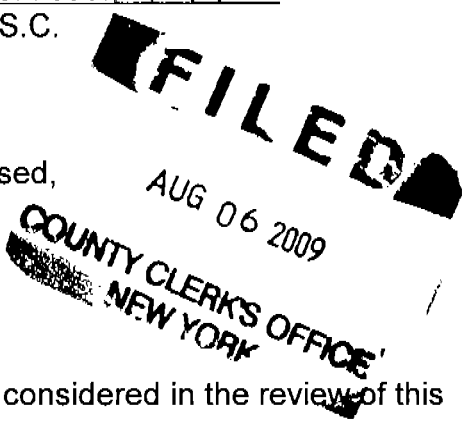
Defendants.

-----X

Decision/Order

Index No.: 104121/08
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 this (these) motion(s):

Papers	Numbered
Notice of Motion, DY affd., PJC affirm., Exhibits	1
Notice of Cross-Motion, RMN affirm., JH affd., exhibits.....	2

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

This is an action for declaratory judgment and damages. Plaintiff moves, pursuant to CPLR § 3215, for entry of a default judgment against defendant Reed International Property Management, Inc. ("Reed"). Co-defendants Citibank N.A., and Citigroup, Inc. (Collectively "Citi") cross-move for a default judgment or alternatively summary judgment against Reed. Both the motion and cross-motion have been served upon Reed, which has not opposed either. At the outset, the court denies Citi's request for summary judgment against Reed because issue has not been joined. CPLR § 3212. Citi's motion will be considered only to

the extent it seeks a default judgment against Reed.

A supplemental summons and amended verified complaint was served on Reed by service on the New York State Secretary of State in accordance with BCL §306, on February 6, 2009. Additional copies of such documents were served on February 17, 2009 in accordance with CPLR § 3215(g)(4).

Citi's summons on cross-claim, verified answer, counterclaim and cross-claims were served on Reed by service on the New York Secretary of State in accordance with BCL §306, on March 11, 2009. A additional service was made on Reed of such documents in accordance with CPLR 3215(g) on March 13, 2009.

Reed has not appeared in this action within the time provided for in the CPLR and Reed's time to do so has not been extended by the court. Therefore, the Reed has defaulted in this action.

Plaintiff and Citi are entitled to default judgments against the Reed, provided each otherwise demonstrates that it has a *prima facie* cause of action. Gagen v. Kipany Productions Ltd., 289 AD2d 844 (3rd dept. 2001). Reed's 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).

Plaintiff states that on or about December 22, 1993 he entered into a real estate management agreement with Reed in connection with certain real estate that Yee owned. The agreement provided that all rents and other monies collected by Reed on behalf of Yee in furtherance of its management of the property were to be deposited in and escrow account maintained at Citibank N.A. Citibank Account Number 35481027 ("account") was

set up and monies were deposited therein by Reed. As of October 8, 2008 there was a balance of \$83,900.76.

Under the terms of the agreement, upon the termination of services, Reed was to return to Yee the balance of funds held in the account. Shortly after the principal of Reed passed away, Reed ceased its business operations. Yee thereafter terminated Reeds services under the agreement.

Yee claims that despite his requests, and in breach of the agreement, Reed has failed and refused to return the monies held at Citibank N. A. to him. Yee commenced the instant action seeking a declaration against that he is entitled to the balance of monies held in th account and for a release of those monies. Yee also asserts other causes of action against Reed, but he is not seeking any separate relief on account of those causes of action at this time.

Citi does not specifically oppose the motion. It seeks a declaration on its cross-claim/counterclaim that Citi be discharged from any liability in the event that it pays the proceeds held in the account in accordance with this court's order. Yee does not oppose Citi's request for relief.

Plaintiff has succeeded in proving that under the terms of the management agreement with Reed he is entitled to a declaration that Reed breached the agreement by not returning the balance of funds held by Citibank N.A. in account number 35481027 and that he is entitled to the release of the entire balance of funds held in such account. Plaintiff is also entitled to statutory costs. No interest in awarded, because the funds have been held in an interest bearing account. Whatever interest the monies on deposit have earned belongs to plaintiff.

Citi has proven that it is merely the holder of funds and that upon paying the funds to plaintiff in accordance with this decision and order, it is to be discharged from liability to any party to this action.

Although there are other cause of action asserted in the complaint and a further cross-claim, the court cannot ascertain what, if anything, remains of such claims, given the court's decision on these motions. The court, therefore sets a conference, for September 3, 2009 at 9:30 am for the appearing parties to report the court on the status of the case.

Conclusion

In accordance herewith, it is hereby:

ORDERED that the clerk of the Court shall enter a judgment in favor of Plaintiff and against Defendant, Reed International Property Management, Inc., on the first cause of action declaring that Reed International Property Management, Inc. breached the management agreement between the parties by not returning the balance of funds held by Citibank N.A. in account number 35481027 and that Plaintiff is entitled to the immediate release of the entire balance of funds held in such account. Plaintiff is also entitled to statutory costs and it is further

ORDERED that the clerk shall enter a judgment on the first counterclaim and cross-claim in favor of defendants Citibank N.A. and Citigroup, Inc. that when Citibank pays the balance of the monies held by in account number 35481027 to plaintiff, they shall be discharged from further liability to any other party in this action in connection with releasing such account and it is further

ORDERED that a status conference is set before this court for September 3, 2009 at 9:30 am.

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
August 4, 2009

So Ordered:



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

FILED
AUG 06 2009
COUNTY CLERK'S OFFICE
NEW YORK